TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 58

CHAPMAN & DEWEY LUMBER COMPANY AND CHAPMAN & DEWEY LAND COMPANY, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF DIRECTORS OF FRANCIS LEVEE DISTRICT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED AUGUST 30, 1924.

(29,359)

(22,839)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 82.

CHAPMAN & DEWEY LUMBER COMPANY AND CHAPMAN & DEWEY LAND COMPANY, PLAINTIFFS IN ERROR,

vs.

THE BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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1 *Caption.*

Pleas Before Honorable E. D. Robertson, Chancellor of the Fifth Chancery District, in Chancery Court of Poinsett County, Arkansas, at the February Term, 1910.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN AND DEWEY LUMBER COMPANY and CHAPMAN AND DEWEY LAND COMPANY, Defendants.

2 *Complaint.*

In Poinsett Circuit Court.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LUMBER CO., Defendant.

Plaintiff states that the defendant is a corporation organized under the laws of the State of Missouri, and engaged in the lumber business in the State of Arkansas.

That the defendant, begin-ing about the Fall of 1904, and continuing until the Summer of 1907, at various times, entered upon the lands of the plaintiff, to-wit: Sections 14, 15, 22 and 23 in Township 12 N. R. 7 E. and cut therefrom 2400 cottonwood trees, amounting in all to 4,696,800 feet.

Plaintiff states that the said timber was cut from those lands which were left unsurveyed by the United States Government, but which would have been, if surveyed out, in the sections aforesaid.

Plaintiff states that it owns said lands by virtue of the Act of Congress of September 28, 1850, granting all the swamp and overflowed lands to the State of Arkansas, and by the Act of the Legislature of the State of Arkansas of 1893, conveying to this plaintiff all of said lands.

Plaintiff states that the said timber was worth the sum of Four dollars per thousand, being in all the sum of $19,784.00.

Plaintiff states that the defendant entered upon said lands knowingly and wilfully and without any just claim or right thereto, and without any probable cause on the part of defendant to believe that the said lands so trespassed upon were its own.

The plaintiff states that under the statute of the State of Arkansas it is entitled to recover three times the value of said

3 timber.

Wherefore it prays judgment for the sum of $59,352.00, and for all costs and all other proper relief.

JEFF DAVIS,
H. F. ROLESON,
Attorneys for Plaintiff.

Filed Aug. 31, 1907.
J. C. MITCHELL, *Clerk.*

1—82

4 *Answer.*

Poinsett Circuit Court.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LUMBER COMPANY and CHAPMAN & DEWEY LAND COMPANY, Defendants.

The defendants, for their answer to the complaint of the plaintiff herein say:

I.

The defendant, Chapman & Dewey Lumber Company, admits that it is a corporation, organized under the laws of the State of Missouri, and engaged in the lumber business in the State of Arkansas.

The defendant, Chapman & Dewey Land Company alleges that it also is a corporation organized under the laws of the State of Missouri, and duly authorized to do business in the State of Arkansas.

The defendants deny that they have entered upon any lands belonging to the plaintiff, in the fall of 1904, in the summer of 1907, or at any other time between those dates or thereafter, and cut therefrom 2,400 cottonwood trees, containing 4,696,800 feet, or any other number of such trees.

The defendants deny that the said timber was worth the sum of Four dollars per thousand feet.

Defendants deny that they or either of them entered upon said lands knowingly or wilfully or without any just claim or right thereto, or without any probable cause on their part to believe that the said lands were their own.

The defendants deny that the plaintiff is entitled to recover three times the value of said timber, or any other sum.

5

II.

The defendants state that the defendant Chapman & Dewey Land Company was the owner of and in possession of the trees and timber referred to in the complaint, and the land whereon they grew, at all the times therein mentioned, and that the plaintiff was not the owner thereof and not in possession of the same or any part thereof, or of the land whereon said trees and timber grew; and the defendant Chapman & Dewey Lumber Company had from said Chapman & Dewey Land Company full and complete license, authority and permission to enter and cut said trees and timber.

III.

The defendants further answering say that the cause of action stated in the complaint, if any, did not accrue within three years next before the commencement of this action.

IV.

The defendants, for a further answer herein, allege: (1) That the defendant Chapman & Dewey Land Company is the owner in fee simple of the following described tracts of land, situate in Poinsett County, Arkansas, to-wit: All of Section One (1), Two (2), Three (3), Ten (10), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-two (22), Twenty-three (23), all in Township Twelve (12) North, Range Seven (7) East.

(2.) Within the meander lines of the United States Government survey causing said sections to be fractional, and entirely surrounded thereby, except for about one-half mile on the north in said Section One (1), is a territory which at the date of the surveys of said
6 lands by the United States, was a large, open lake, about two miles wide from East to West in the widest place, and having an extreme length of about three miles from North to South. Upon the said surveys, the said lake was designated and marked as "Right Hand Chute of Little River" "Sunk Lands." All the tracts of land above described were meandered upon the margin of said lake, the plats, field notes and surveys calling for the said lake as a boundary, and the center of said lake, and not the meander line aforesaid, is the boundary thereof. The said lake has long been known as Bark Camp Lake.

(3.) Little River, which is itself an unnavigable stream, divides at the foot or south end of Big Lake, in Mississippi County, Arkansas, into two streams, the one called the Left Hand Chute of Little River, being the main channel, which after a tortuous course empties into the St. Francis River; the other, called the Right Hand Chute of Little River, flows to the west, at a distance from said Left Hand Chute varying from one to five miles, and finally empties into the St. Francis River, a large part of the water, however, making its way into the Left Hand Chute through a channel called Dillard Cut Off, at a point just south of the lands in controversy herein.

(4.) The depression of the earth's surface forming the bed of this lake was formed by the New Madrid Earthquake of 1811, and this was filled and made into a lake by the waters of said Right Hand Chute flowing into it. The waters of said Right Hand Chute still find their way through this lake into the St. Francis River and the Left Hand Chute as aforesaid. The bed of said lake is filled with logs, stumps, snags and other debris, and has been ever since said earthquake.

(5.) At the date of said surveys, and for many years after-
7 wards, until about the year 1897, the said lake was subject to periodical overflows from the Mississippi River, which covered it and all the adjacent lands to a great depth. These waters were very muddy, and stood for a long time upon the whole basin of the St. Francis River, including all the territory in controversy herein, and thereby much sediment was deposited thereon. Likewise, the waters of said Right Hand Chute here came almost to a stand, flowing through said lake in many small and devious chan-

nels or runs, and practically all of the sediment contained therein was deposited upon the bed of said lake and the lands adjacent thereto, above described. Likewise, the current of said Right Hand Chute brought into said lake and deposited there much soil and driftwood.

(6.) During all of said period, also, upon the margin of said lake and at shallow places therein there have grown up every year immense quantities of weeds, flags, bushes, mosses, vines, briers and grasses, and leaves have been blown and have fallen therein. All the soil here is made by deposits of sediment from the Mississippi River and the waters of the Right Hand Chute, and vegetation growing and falling thereon as aforesaid, and it is very rich and said vegetation grows to be rank and heavy, and has always so grown. This vegetation has been annually killed by the frosts; the said soil and sediment have been annually deposited thereon, and much land has been thereby raised above the surface of the waters of said lake.

(7.) The St. Francis Levee was constructed about the year 1897 along the Mississippi River, so that it protects the territory in controversy from overflows from that river, and has so protected it ever since that date. Since, then, the said lake has never had as much water in it as it had before. The water therein has dried up annually in the Summer to a greater extent and faster than formerly, and considerable areas of the former bed of said lakes have become dry early and long enough to permit the growth of vegetation thereon.

(8.) By reason of all the matters and things above stated, through all the years since the date of said survey until now, the margin of said lake has been gradually and imperceptibly advancing and growing toward the center of said lake. First, the weeds, mosses, grass and underbrush aforesaid would grow up and decay; then would come willows, thorns and cypress trees, which grow in and about the water; then cottonwood and ash, which thrive in a damp, rich soil. All of these growths proceeded out gradually and imperceptibly from the margin of said lake towards its center. All of the land formed and made as aforesaid by the processes of accretion and reliction was formed and made first against the said surveyed tracts of land, and was built up, made and formed outward therefrom toward the center of said lake.

(9.) The said Right Hand Chute of Little River and the said Lake are and always have been unnavigable waters.

These defendants specifically claim and assert that under and by virtue of the official record of said surveys, made under the authority of the United States, by virtue of the laws of the United States, and especially the Act of Congress of September 28, 1850, known as the Swamp Land Grant, and under and by virtue of the patents issued by the United States and the correct construction thereof, and the rulings of the Commissioner of the General Land Office of the United States and the Secretary of the Interior, with special reference to this land, and the adjudications of the Supreme Court of the United States, that the defendant Chapman & Dewey Land Company is the owner of all the bed of said Right Hand Chute of Little River

and Sunk Lands within and towards the waters from said
9 meander line thereof.

(10.) The defendant Chapman & Dewey Land Company holds the legal title to this land, but by license, consent and permission of the said Chapman & Dewey Land Company, the defendant Chapman & Dewey Lumber Company has full control and management of the timber on said land, having the right and full authority to cut and remove timber therefrom, and to manufacture the same into lumber and boxes.

V.

The defendants, further answering, say that the timber cut by the defendants in the vicinity of the region described in the complaint, if any, was cut at various times and in different places, and it will be necessary, in the event that any relief is granted the plaintiff herein, to ascertain what part thereof, if any, was cut upon the property claimed by the plaintiff, and what part upon the surveyed lands admitted to belong to the defendant Chapman & Dewey Land Company, and the dates of said cuttings, respectively; it will be necessary, also, to examine a large number of books and much documentary evidence, consisting of scale books, ledgers, correspondence and other documents and records, in order to ascertain correctly and definitely what timber, if any, was cut upon the different parts of said land as aforesaid; it will be necessary to have an account stated between the parties hereto, because of the intricacy and magnitude of the matters involved in this cause, because of the long period of time over which the transactions complained of in the complaint extended, and because of the great mass of books, documents and records necessary to be examined.

Defendants further state that the cause of action, if any, stated in the complaint, is based upon an equitable, and not a legal title.
10 Wherefore, the defendants pray that the cause may be transferred to the Chancery Court in order that there may be an accounting with respect to all the matters complained of in the complaint; and the defendants further pray that the plaintiff take nothing by reason of his complaint in this action, and that they, the defendants, go hence without day.

ASHLEY, GILBERT & DUNN.
R. S. RODGERS.
ALLEN HUGHES.
CHAS. D. D. FRIERSON.

Filed Octo. 24, 1907.

J. C. MITCHELL, *Clerk.*
By W. W. NELMS, *D. C.*

11 *Order of Continuance.*

Circuit Court Record—Law, "B"—October Term, 1907, Oct. 24th, 1907.

No. 357.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LUMBER COMPANY, Defendant.

Answer filed and cause continued, and set for 2nd day.

This cause being called comes the Defendant herein by its attorney, and files *his* answer as such herein and this cause is continued until the next term of this Court and same is set for 2nd day.

12 *Ordering Transferring to Chancery.*

Circuit Court Record—Law, "B"—October Term, 1907, Nov. 1st, 1907.

No. 357.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LUMBER CO., Defendants.

Continuance set aside and cause transferred to Chancery.

On this day it is by the Court ordered that the continuance heretofore made in this cause be and the same is hereby set aside and the cause transferred to Equity.

13 *Deposition of J. M. Winston.*

In Poinsett Circuit Court.

BOARD OF DIRECTORS OF THE ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LUMBER CO., Defendant.

Depositions of witnesses taken in the above-entitled cause to be used in behalf of the plaintiff, the taking being by agreement, at Marked Tree, Arkansas, January 9, 1908.

All questions are waived except questions of relevancy and competency.

____ ____,
Counsel for Plaintiff.

____ ____,
Counsel for Defendant.

Mr. J. M. WINSTON, being first duly sworn, testifies as follows:

(Mr. N. W. NORTON:)

Q. 1. State your name, age, residence and occupation?

Ans. J. M. Winston; 33 years old; live in Memphis, Tenn., and am engaged in the Engineering Department of the St. Francis Levee Board.

Q. 2. Were you with the St. Francis Levee Board in that capacity in 1907?

A. Yes sir.

Q. 3. During that time, in connection with your employment, were you at any time in Township 12, North, Range 7 East, in Poinsett County, Arkansas?

Ans. Yes sir.

14 Q. 4. What was the purpose of your visit to that locality?

Ans. To run levels across unsurveyed land.

Q. 5. Who accompanied you?

Ans. Mr. W. B. Miller, President of the Board, Mr. H. F. Roleson, Attorney for the Levee Board.

Q. 6. Any one else?

Ans. Mr. S. A. Sage, a surveyor, and Mr. —— Calhoun, who is a surveyor. I don't know his initials.

Q. 7. Was he employed by you or Mr. Sage?

Ans. While I was there running the levels he was employed by me.

Q. 8. How long were you in there, Mr. Winston?

A. I was there—got there on the—let's see, (referring to memorandum book) I commenced work on the 6th and worked the 6th, 7th, 8th, 9th and 10th.

Q. 9. Of November?

Ans. Yes sir, November.

Q. 10. Was Mr. Sage in there the same length of time?

Ans. He was there on the 9th.

(Mr. HUGHES:)

Q. 11. You mean up to the 9th?

Ans. Yes sir. He worked ½ day on the 6th, all day the 7th, 8th and 9th.

(Mr. NORTON:)

Q. 12. I will show you a plat of 12—7 and ask you to say from that plat where the unsurveyed land lies and about the area that you worked on; just approximately?

Ans. The length of levels that I run in each direction and across unsurveyed land—(taking plat from Mr. Norton and referring to same) I began on the east side of this township on surveyed land and run west three miles to west boundary of the unsurveyed

15 land; this is line "A" on the profile which I will exhibit. I run levels at section corner of 10, 11, 14 and 15; run south a mile and a half to ½ section corner between 22 and 23; that is on surveyed land, and this line is marked "B" on the profile which I

will exhibit thence west for one mile on ½ section- 21 and 22 on surveyed land, and this is line "C"; beginning at corner between 12 and 13 on surveyed land I run another mile and a half; all this line is on surveyed land, and is marked "D"; beginning at section corner 13, 14, 23 and 24 at the meander line and run west one mile to ½ section corner between sections 22 and 23 on surveyed land, this line is marked "E". That is all the levels I run.

Q. 13. How did you arrive at the corners from which you started to make these levels?

A. They were run out by Mr. Sage and Mr. Calhoun, who are surveyors.

Q. 14. They gave you starting points?

Ans. Yes sir.

Q. 15. And gave you the course?

Ans. Yes sir.

Q. 16. I will ask you now if you made a profile from the levels you took?

Ans. Yes sir.

Q. 17. Can you exhibit it with this deposition?

Ans. Yes sir.

Q. 18. I wish you would identify it with your signature; just take a pen and put your signature on it?

Ans. Well, I already have my name on it as Division Engineer of the St. Francis Levee District.

Q. 19. Very well. I will ask you now if this profile you made correctly represents the levels that you took?

Ans. Yes sir.

16 Q. 20. Made with care, is it?

Ans. Yes. sir.

Q. 21. Now I will ask you how much of line "A" is on surveyed land, either at one end or at both ends?

Ans. At the east side there is 1029 feet on surveyed land.

Q. 22. None on the west side—as I remember, you said you stopped at the meander line?

Ans. Yes sir.

Q. 23. Now about line "B" as to surveyed land at either end, how much?

Ans. There is 1560 feet of surveyed land at the south end.

Q. 24. None on the north end?

Ans. No sir.

Q. 25. Now then, Line "C", how much surveyed land on either end?

Ans. On the east end there is 1287 feet.

Q. 26. None on the west?

Ans. Wait a minute—yes sir—there is about 1100 feet—I wouldn't say exactly how much.

Q. 27. Now give us the surveyed land on either end of Line "D"?

Ans. All on surveyed land.

Q. 28. Now then, about line "E", same question.

Ans. About 2000 feet.

Q. 29. Which end?
Ans. On the south end.
Q. 30. None on the north end, I suppose?
Ans. No sir: began at the meander line.
Q. 31. To what extent, if at all, did you come in contact with water in making these levels?

17 Ans. The only water we came to at all—we didn't find any water that bothered us whatever. The only water we found was on surveyed land.

Q. 32. On surveyed land?
Ans. Yes sir.
Q. 33. Well just state in what section or sections you found that?
Ans. That was in section 1; that was the only water we found, with the exceptions of water in the chutes.
Q. 34. It is a stream, is it, a chute?
Ans. Yes sir.
Q. 35. About how wide?
Ans. About 150 feet.
Q. 36. Well, what character of water was that you found in Section one?
Ans. In small holes.
Q. 37. About what size?
Ans. I suppose about 25 or 30 feet across.
Q. 38. How long?
Ans. Not much longer; just small holes.
Q. 39. As to the timber; what was the general character of the country you crossed in making these levels?
Ans. Mighty good timber.
Q. 40. What was the growth?
Ans. Cottonwood, gum, some ash and cypress.
Q. 41. About what size would the gum trees be, some of them?
Ans. Why the gum trees would run from two to three feet.
Q. 42. And the ash trees?
Ans. Why they would run—sorter hard to tell—about two feet.

Q. 43. The cottonwood?

18 Ans. A cottonwood tree marked here as measured 4 feet and 8/10 in diameter. Of course they don't all run that size.

Q. 44. Was there some places here and there where there was no timber?
Ans. Yes sir, some flag openings.
Q. 45. About what would be the area in these flag openings?
Ans. The flag opening where I crossed it on Line "A" 2000 feet.
Q. 46. Is that the width or length?
Ans. Width, yes sir. And that is about the same width on line "D".
Q. 47. What is the general course of that flag opening?
Ans. Why it is sorter northeast—a little bit east of north.

Q. 48. And if the land was sectionized; in what section would it fall practically?

Ans. Twelve, eleven and fourteen would be about the main part of it.

Q. 49. It was dry, was it?

Ans. Practically dry; only just those few holes I spoke of.

Q. 50. I was about to forget to ask you with reference to your exhibit, your profile, the scale?

Ans. Why the scale as printed here on the profile on this paper, each one of the perpendicular red lines represents 100 feet and the heavy red lines represent 1000 feet, and these small lines represent a foot.

Q. 51. The small lines represent a foot?

Ans. Yes sir, and the heavy lines 1000 feet, and the light red perpendicular lines represent 100 feet.

Q. 52. That is made upon paper made for the purpose, is it not?

Ans. Yes sir.

Q. 53. When you were about the meander line at any
19 of these places, where you touched the meander line, what would be the difference in the appearance of the country on surveyed or unsurveyed land, if any?

Ans. A person walking over it, not knowing anything about it, could not realize where the lines were by the lay of the country, or ground, or timber.

Q. 54. By any natural object or condition?

Ans. No sir.

Cross-examination by Mr. ALLEN HUGHES:

Q. 55. Mr. Winston, you are only speaking in this deposition of present conditions?

Ans. Yes sir.

Q. 56. Was this the first trip you had ever made to this country?

Ans. Yes sir.

Q. 57. Who suggested the place where these lines should be run?

Ans. Why Mr. Roleson and Mr. W. B. Miller.

Q. 58. Mr. Miller is President of the Levee Board, and Mr. Roleson is Attorney?

Ans. Yes sir. They asked me in regard to what I thought—which was the best lines to give a representation of the lay of the country.

Q. 59. You speak of a flag opening; is that flag opening on the surveyed or unsurveyed land?

Ans. Part on surveyed land; most of it on unsurveyed land.

Q. 60. How much on surveyed land, about?

Ans. Well, I couldn't tell you; I can show you on this government map about how it runs.

Q. 61. A very small part of it is on surveyed land?

20 A. Yes, not a very large amount.

Q. 62. Wouldn't amount to ½ section, or a quarter?

Ans. About ½ section, something like that.

Q. 63. Would it amount to as much as 10% of the whole opening?

Ans. I don't think it would. I don't know what the area is of the whole opening—about ½ section on surveyed land.

Q. 64. Well, where are the water holes that you speak of in that flag opening?

Ans. On surveyed land.

Q. 65. Entirely so?

Ans. Well they are the only one- we found, and some of the boys walked around a good deal over the opening, trying to find water to drink.

Q. 66. Why didn't they take a drink on surveyed land?

Ans. We did when we found it.

Q. 67. Did you, after you found the water holes on the surveyed land, make any effort to find water further down this flag opening toward unsurveyed land?

Ans. No sir.

Q. 68. The place where search was made for water then was some other place than this flag opening?

Ans. In the flag opening—in some other part of the same flag opening.

Q. 69. On what part of the flag opening from the place where you did find water did you make a search for water?

Ans. On line "A", which is supposed to run through the center of the unsurveyed land.

Q. 70. And on what line did you actually find water?

Ans. Line "D".

21 Q. 71. This survey was made at a very dry season of the year, was it not, Mr. Winston?

Ans. Yes sir.

Q. 72. And as a matter of fact, there was very little water anywhere in the bottoms at that time except in running streams?

Ans. Yes sir, that is about all we found.

Q. 73. The sloughs were all dry except a few holes, were they not?

Ans. The right hand chute was running some.

Q. 74. The sloughs and bayous were ordinarily dry?

Ans. Yes sir, all small holes were dry.

Q. 75. You speak of certain timber being found in that country. Is it not a fact that in giving these figures you are giving the sizes of the very largest trees you found?

Ans. No sir, it is not. We did measure some large ones, but some of the trees that I have given the diameter of were trees that were just along the line in different places, not picking out any specially large trees.

Q. 76. Well, an ash tree two feet in diameter is quite a large tree for an ash, isn't it?

Ans. Yes sir.

Q. —. Do you mean to say that all of the trees are two feet in diameter up there?

Ans. No sir, some run from ½ to 2 feet.

Q. 78. When you say two feet, you give outside measurements, do you not?

Ans. Yes sir.

Q. 79. Then it runs from that down to very small ask timber?

Ans. Yes sir; runs down small.

22 Q. 80. This cottonwood you speak of being four feet in diameter—that is an especially large cottonwood that your attention was called to, is it not, by these gentlemen who were with you, Mr. Roleson and Mr. Miller?

Ans. Yes sir, they measured it.

Q. 81. What was the largest tree you found?

Ans. I don't think that was the largest, but the largest tree we measured.

Q. 82. How large a one did you find?

Ans. They did not measure very many that I taken down.

Q. 83. Did you take this one down?

Ans. Yes sir.

Q. 84. How large was the largest one you took down?

Ans. That one was the largest.

Q. 85. The cottonwood timber is the heaviest timber in that country, is it not?

Ans. Yes sir. That is the largest of what I would call the best timber.

Q. 86. Now did you notice around the cottonwood trees whether or not there were elevations or do-nicks ordinarily; especially these large ones?

Ans. Yes sir.

Q. 87. They stand on elevations, do they not?

Ans. You find these donicks all around there, not specially around trees.

Q. 88. But the cottonwoods usually grow upon those do-nicks, do they not?

Ans. Yes sir, in that part of the country.

23 Q. 89. And is it not true, Mr. Winston, that near this meander line you frequently find a tongue of land that runs out into the unsurveyed land.

Ans. Well, I couldn't say in that case, for it would be impossible for me to tell where the meander line is; I could not tell.

Q. 90. Did you follow the meander line or take any note of different conditions on the two sides of it?

Ans. I was on the meander line a good deal; I followed it, but never run any levels.

Q. 91. In walking around the meander line, did you notice these tongues of land to which I refer running out of water in all levels alike?

Ans. Practically all about the same.

Q. 92. You still, however, found the high places where the cottonwood grew, didn't you?

Ans. Yes sir, it was unsurveyed land the same as on the surveyed.

Q. 93. You found some gum timber, you say?

Ans. Yes sir.

Q. 94. Was it very large?

Ans. Yes sir, some I would consider large timber.

Q. 95. Was it as large as you ordinarily find in bottoms, other places, and as thick?

Ans. Yes sir, I believe it was.

Q. 96. That true all over the unsurveyed land?

Ans. Well there is parts of it that there wasn't much gum on as cottonwood and other timber. I would say that there is gum timber over most of it.

Q. 97. It is very scattering is it not over the greater part of it?

Ans. No sir, very good gum timber over all of it, except
24 the flag openings.

Q. 98. The greater part of this gum was near this meander line, was it not?

Ans. No sir, we found on that unsurveyed land places where there was small can- ridges and seemed to be a little higher ridges than other places there was gum on them.

Q. 99. The gum predominated on the cane ridges just within the meander line, did it not?

Ans. No sir, we found a good deal of gum some distance from the meander line.

Q. 100. I am not saying you did not find any, but found most of it on the meander line and on the ridges, did you not?

Ans. Most of the large timber, of course, was on the high ridges, and there wasn't any on the flag openings, or you might say for a quarter—well not a quarter either, but probably five or six hundred feet around the edges of these openings there was no cottonwood or gum, but out from there we found good gum and ash and cottonwood, way out from the meander line, probably half a mile or a quarter.

Q. 101. Did you ever have any transactions in timber?

Ans. No sir.

Q. 102. Do you know anything about its quality?

Ans. Well, I never did handle timber any, only just from observation.

Q. 103. You can tell how big around a tree is by looking at it—that if about the extent of your knowledge, is it not?

Ans. Yes sir, by measuring it. I know of course whether timber in a certain country is better than the general run of timber over the country.

Q. 104. Now you spoke of certain other character of timber, what were those? You spoke of cypress, did you not?

25 Ans. Yes sir.

Q. 105. Is the cypress in that country large?

Ans. Some of it is rather large; more gum and cottonwood though than cypress.

Q. 106. What did you tell Mr. Norton was the size of the cypress trees?

Ans. I don't think I told him the size of the cypress trees.

Q. 107. Is that an oak country?

Ans. Some oak, not a great deal.

Q. 108. Scattering, is it not?

Ans. Yes sir.

Q. 109. Just in high spots you find oak trees?

Ans. We found it on practically all the elevations of that country.

Q. 110. I am talking about the highest parts of this land, was the timber you found oak trees? Oak trees*t* don't grow in water?

Ans. No sir.

Q. 111. What species of oak was this?

Ans. White oak, or something like that, not willow oak.

Q. 112. What you call overcup oak, is it not?

Ans. Yes sir.

Q. 113. You spoke of these cane ridges, where did you find them?

Ans. We found some of them on unsurveyed land.

Q. 114. Where abouts on the unsurveyed land did you find the cane ridges? Tell us each one you can think of that you found, and how big it was.

Ans. We found the cane ridges on line "E".

Q. 115. Well now, where?

Ans. On section 14.

Q. 116. What part of Section 14?

26 Ans. The Southeast quarter.

Q. 117. How far is that from the meander line?

Ans. About a quarter of a mile.

Q. 118. How much of a ridge in size is that?

Ans. It is about a thousand feet wide, and runs back into the unsurveyed land. I never measured the length of it. I would say it is something like between ¼ and ½ a mile.

Q. 119. It is joined on to the surveyed land, is it not? Runs back to the surveyed land?

Ans. I don't know whether it does or not. I did not follow it back.

Q. 120. What other cane ridges did you find?

Ans. I found cane ridges on line "C".

Q. 121. What section?

Ans. On the line between 15 and 22.

Q. 122. What was the size of it?

Ans. About 700 or 800 feet wide.

Q. 123. What was the length of it?

Ans. Between a quarter and a half a mile long. I never measured the length.

Q. 124. Runs back towards the surveyed land?

Ans. Yes sir, runs toward the unsurveyed land too—runs both ways.

Q. 125. You just crossed it?

Ans. Yes sir.

Q. 126. Any others?

Ans. No sir, I don't know of any others.

Q. 127. Does your profile show a different elevation for these cane ridges as compared with the surrounding country?

Ans. They were about one foot higher.

27 Q. 128. The whole country over which you ran levels is comparatively level, is it not?

Ans. Yes sir.

Redirect examination (Mr. NORTON):

Q. 130. I forgot to ask you, Mr. Winston, if some photographs were taken on that trip?

Ans. Yes sir.

Q. 131. Did the party find any ore like substance on the ground anywhere on that trip?

Ans. I can't say. Not while I was with them. I was only with them a short time, and they were taking those photographs.

Q. 132. When they were taking photographs?

Ans. Yes sir.

Q. 133. Were there any indications that you observed of timber having been cut in that unsurveyed land?

Ans. Yes sir, there had been some cut.

Q. 134. Find stumps, would you?

Ans. Yes sir.

Q. 135. What kind of stumps?

Ans. Cottonwood, ash, some cypress and gum—different kinds.

Q. 136. Was the cutting some new and some old, or how from appearance?

Ans. Yes sir, some newer than other.

Q. 137. Well, was there what you would regard a good deal of old cutting, or just rather thin?

Ans. There was a good deal in some parts.

Q. 138. Now from your profile here, how much is that flag opening lower, if any, to the land adjacent that had timber on it?

Ans. In line "A" that runs across the main part of the

28 opening, there is about three feet difference in the entire line across surveyed land to unsurveyed land.

Q. 139. Three feet difference?

Ans. Yes sir.

Q. 140. That means that the highest point is three feet higher than the lowest point?

Ans. I never taken any holes. That is the average across, from the highest to the lowest.

Q. 141. The elevation is nowhere exceeding three feet, is that the idea?

Ans. Yes.

Q. 142. Does that include surveyed and unsurveyed land together?

Ans. With the exception of do-nicks.

Q. 143. They are found on surveyed land as well as unsurveyed?

Ans. Yes sir.

Q. 144. Now I want you to state what it is that they call a donick in this locality and about these lands, just describe it?

Ans. A do-nick is the small hills of land around over the country. It seems that sometimes the land has been washed from around them. It is a small hill, some as much as four feet higher than the surrounding land, and all the way from 50 feet to possibly a quarter of an acre in them—some smaller.

Q. 145. Did you see anything to indicate that the ridges in that unsurveyed land ran in any certain direction as a rule?

Ans. No sir, I couldn't say that I did.

Q. 146. Well for the sake of getting it on record once, I want to ask what it is we all understand when we say unsurveyed land?

Ans. Well, it is the land which now appears outside of the original meander line run by the Government and toward what
29 is shown by the Government plats to be waste or sunk lands.

And further deponent saith not.

30 *Deposition of S. A. Sage.*

Mr. S. A. SAGE, being first duly sworn, testified as follows:

(Mr. NORTON:)

Q. 1. Please state you- name, age, residence and occupation?

Ans. S. A. Sage. I live at present at Marked Tree, Ark., my age is nearly 50, will be next month; I am a surveyor.

Q. 2. Were you, during November last at any time, as a surveyor in township 12 North, Range 7 East?

Ans. Yes sir.

Q. 3. Did you do some surveying?

Ans. Yes sir, I did.

Q. 4. For whom?

Ans. I suppose it was for the St. Francis Levee Board.

Q. 5. Who was in the party, all told?

Ans. I would have to get the time book to tell that. Quite a number. Winston was up there. Calhoun was up there as a surveyor; Winston running levels; Roleson was there; W. B. Miller and others.

Q. 6. Do you know for what purpose they had you run some lines?

Ans. They just wanted me to locate the Government survey was all.

Q. 7. To locate the Government survey?

Ans. Yes sir.

Q. 8. What did Mr. Winston do?

Ans. He was running levels.

Q. 9. He, in running levels, would follow some line that you run out for him?

Ans. He followed Calhoun most of the time. He run the line for Winston. I was along though part of the time. We were taking pictures out there some of the time.

Q. 10. They wanted you then to locate the Government lines?

31 Ans. Yes sir.

Q. 11. And wanted them in connection with the levels that Mr. Winston was to run?

Ans. It was to some extent.

Q. 12. You would locate the corners for Mr. Calhoun to run lines which Mr. Winston would follow in making levels?

Ans. Yes sir, that is what we did any way.

Q. 13. Now please tell us where you located Government corners and lines, and it might be a good way to begin at the beginning of your work.

Ans. I will have to have a map to call it over. (Handing him map). Well, the first Government corner I found up there was a fractional corner between sections 14 and 15 on the meander line in township 12 north range 7 east. Another Government corner I found was a sectional corner right in south of there that was a corner of 14, 15, 22 and 23, right here at this point. (Referring to a certain place on the map).

Q. 14. Did you run any lines there about either of these corners?

Ans. Well, I run down there of course, but did not make any lines there—found the corner.

Q. 15. Do you remember what kind of trees were on each of these corners?

Ans. Two cypress at the first, one cypress at the second.

Q. 16. How large were those cypress?

Ans. Well, I don't know that I can remember that. They were not very large; it is down on the book some place, but I haven't got the book here.

Q. 17. Did you cut in to find the Government mark?

Ans. I cut in at the first corner.

32 Q. 18. Do you remember how far you had to cut in to find the mark?

Ans. No sir, I don't remember, but the first one I cut in there was a dead tree and I don't think it was over three inches. I don't remember how far it was.

Q. 19. Well now, let'e go on to the next work.

Ans. The next corner was a fractional corner out in sections 15 and 22—a maple—had bark mark on it, which occurs very often that way in meander lines—bark marks.

Q. 20. Maybe it might help for you to tell us what a bark mark means?

Ans. A bark mark means a mark in the tree where the letters or figures of the Government survey was made on the bark instead of on the tree after removing the bark. I find that the case in a good many meander lines.

Q. 21. Well now, we will take up the next location.

Ans. The next corner located was meander corner of 15 and 16, cottonwood. The next corner from there was the Government corner of sections 15, 16, 21 and 22, a small ash. The next Gov-

ernment corner I found was on the meander corner of sections 14 and 23, a sweet gum tree—had a bark mark. The next Government mark I found that I could do anything with was a fore and aft elm on the line of sections 23 and 24, pretty well south. The next Government tree I found was a fore and aft tree—locust log, on the line of Sections 24 and 25, going out east. That just about sovers all I got over there. Of course I ran lots of other lines, but found very few marks found some old blazes, but found no record trees to amount to anything.

Q. 22. These other lines you run were across unsurveyed lands, were they not?

33 Ans. No sir, I was trying to follow meander lines or anything else of Government character I could get.

Q. 23. How long were you in there, Mr. Sage?

Ans. A couple of months, I guess. More than that, maybe. I wasn't in there all the time.

Q. 24. I meant to ask you as to this particular trip when the levels were run?

Ans. Something like from the 5th to the 10th of November; I don't remember the exact date.

Q. 25. I will ask you if some pictures were taken on that trip?

Ans. Yes sir, I found plenty of other Government corners in the south and west part of the township.

Q. 26. Just commence and give us a history of those corners, like you did these.

Ans. Now this one (pointing to map) you know I found that sometime ago—corner 9, 10, 15 and 16. I started from that, found quarter corner of 9 and 16; found the section corner of 8, 9, 16 and 17; found the quarter corner of 16 and 17; section corner of 16, 17, 20 and 21; quarter corner of 16 and 21; meander corner of 16 and 21 near the right hand chute; quarter corner of 17 and 20; section corner of 17, 18, 19 and 20; quarter corner of 20 and 21; section corner of 20, 21, '28 and 29, and the quarter corner of 20 and 29; the meander corner of 20 and 29. I found the corner of 32 and 33 and the corner of 31 and 32; the quarter of 31, and the township corner of townships 11 and 12, range 6 and 7 east, and the meander corner of 30 and 31. That is all good Government corners, and plenty of evidence of the *balzed* lines.

Q. 27. Have you been in section 1 of that township lately?

Ans. Yes sir, in November.

34 Q. 29. Do you know whether or not there is a flag opening up there on the surveyed part of it?

Ans. Section one? Yes, sir, I know there is.

Q. 29. Do you remember whether the field notes refer any way to that flag?

Ans. No sir, I don't remember if it did.

Q. 30. I will ask you, Mr. Sage, how long you have been acquainted with this country; I mean this land about which you are testifying?

Ans. I have been in this country all my life. I can't recall to

mind just the first time I was ever up in there; don't know how old I was—was up there hunting cattle a good many years ago.

Q. 31. Before you were grown?

Ans. Yes sir.

Q. 32. Have you lived in this neighborhood all your life?

Ans. I was born on Cane Island about 15 or 18 miles—may be 20 miles from this land. I had some cattle one time and they ran away and came right down in this country, and I came down trying to find them when I was just a boy, and started right here at Section 33 where Potter lived, and hunted cattle all over that country, including this township.

Q. 33. Then if I understand you right, you have been practically familiar with this township all your life?

Ans. Since I was a good big lad.

Q. 34. Now I will ask you first in a general way what changes there are in the timber or anything in that country since you first knew it?

Ans. No particular changes that I can see by my eye; don't look quite as wild maybe as it used to—I ain't afraid to go up there.

Q. 35. There has been some timber cut in there now and then?

35 Ans. Yes sir, some timber cut.

Q. 36. While you were in there in November last, I am speaking now of the unsurveyed portion of 12—7, did you meet with water?

Ans. Very little if any.

Q. 37. What did you do for water to drink?

Ans. Well, I done without; I couldn't get any; there was probably a little water on the township line on the east side of Section 12.

Q. 38. Did some of the men drink that?

Ans. Yes sir. Of course there was water in the right hand chute anywhere we came in contact with it—running water.

Q. 39. What was called the unsurveyed land in 12 7; I see from the map you have would cover sections 14 and 11 and 15 and some of 12 and some of 13 and 30 and 29, some in 19 and some in 31, some in 22 and 23, some in 1 and 2. Now I want to ask you, Mr. Sage, if there is timber on that land or not?

Ans. There is timber on most of it.

Q. 40. Where there is no timber, what is it?

Ans. Well, there is quite a flag opening up in the northeast corner of the township.

Q. 41. How large is that *falg* opening?

Ans. I don't remember.

Q. 42. Well, I will be very willing to see your estimate of the area in that flag opening?

Ans. I didn't make an estimate.

Q. 43. No, but from your knowledge of it now, I am willing for you to make one?

Ans. I was out of there most of the time when they were sur-

veying up there, and I never made no estimate as to that. I didn't know we would need an estimate as to the amount of opening.

36 Q. 44. I understand that, but you have often seen it—I want you to lump it off independent of the survey, what would you say was the area of those openings?

Ans. I don't know; there must be—I don't know; can't tell.

Q. 45. It was dry when you were there, was it not? That flag?

Ans. Most of it—found a little water on this range line.

Q. 46. Well, where there is no flag then there is timber, tell us the general nature of that timber?

Ans. Well there is cypress, some big cypress and second growth cypress and ash and cottonwood.

Q. 47. Any sweet gum?

Ans. I don't know whether there was; I think there was some sweet gum and some oak up there on the unsurveyed land.

Q. 48. Is there more in any one portion of the unsurveyed land than another?

Ans. Most of the timber is near the chute, I think. The biggest is over toward the chute; I know that.

Q. 49. Now this stream you call the chute; what is the width of it?

Ans. I did not measure it. I guess it would be probably 200 feet in width—something like that—may not be as wide—may be wider. I never measured it.

Q. 50. The heaviest growth of timber then is closest to the chute?

Ans. Yes, the way I seen it.

Q. 51. How large would you find cottonwood, for instance?

Ans. There are big cottonwoods up there, pretty good size—three feet, I guess.

Q. 52. Did you measure any of them?

Ans. Yes sir, some of them.

37 Q. 53. Do you remember the measurements of them?

Ans. No sir, I do not.

Q. 54. Well are they the ordinary growth of cottonwood that one sees anywhere?

Ans. Yes, just like any ordinary cottonwood around in the woods.

Q. 55. Well, that is true of other timber in that unsurveyed land—just like any other wood?

Ans. Looks the same to me. Cottonwood in this part of the country don't look like cottonwood on the bank of the Mississippi.

Q. 56. How does the timber on this unsurveyed land compare with the timber on the surveyed land?

Ans. Why it looks about like the other so far as I know. I didn't notice any material difference. I don't know that I looked to see if there was any particular difference.

Q. 57. Is there any natural condition of the ground or country that would indicate to any one where the meander line is?

Ans. Nothing much; it is mighty hard to tell anything about that.

Q. 58. Well, if you were on that meander line at any given point,

could you see any difference in the timber on one side of the meander line and on the other side?

Ans. Some places you could, and other places you can't. Some places you can look off and see a flag opening towards the surveyed land; one particular place you can see a flag opening on both sides of surveyed land.

Q. 59. And I suppose in some places the meander line would come right up to the chute?

Ans. Yes, right up near.

Q. 60. But when you are away from the chute and away from the flag opening, is there any difference in the country on one side of the meander line and on the other?

38 A. Now I didn't watch that part of it particularly. I had so much to watch I couldn't watch that part. In places the woods all looked alike to me on either side.

Q. 61. Now you have testified of the growth of timber on this unsurveyed land—you say it was cottonwood, ash, some gum and some oak?

A. Some elm. I saw a little elm.

Q. 62. Was that timber there when you was a youth, hunting cattle?

A. Yes sir.

Q. 63. It was?

A. Yes sir.

Q. 64. How near can you fix your age at the time you were in there first hunting cattle?

A. I think I was about 16 years old.

Q. 65. And you have lived in this country all your life since?

A. About all the time.

Q. 66. Well has your business taken you more or less through what is called the sunk lands of Arkansas, since you were grown?

A. A pretty good part of my time.

Q. 67. While these levels were being run by Mr. Winston, did the party with he and you find some ore like substance on the ground anywhere?

A. We found something that looked like charcoal like you find out in the sunk lands.

Q. 68. Well is that met with more or less in the sunk lands?

A. Yes sir.

Q. 69. At about what point did you find this that you found on that surveying trip?

A. I don't think I remember that part. I come up on that
39 coal and what they call iron ore so much I don't pay much attention to it.

Q. 70. Is it to be found most places in the sunk lands?

A. I find it very often.

Q. 71. About what size lumps does it appear in?

A. I find it anywhere from the size of a buchshot up to chunks as big as my hand.

Q. 72. As big as your hand?

A. Yes sir.

Q. 73. Well what other areas are there close to township 12 range 7 that are called sunk lands?

A. Near that township?

Q. 74. Yes.

A. In the west part of 12—7 is sunk land, and then it continues right along in 12—6, going west.

Q. 75. Do you know whether or not that ore like substance is found over there or not?

A. Yes sir, in some places I have found it over there in 12—6. I know up on this unsurveyed land in Sec. 6, 12—7, on the unsurveyed part of Sec. 6, I know where there is some of that, and some iron ore too.

Q. 76. I believe you said the party you was with in November found some in 12—7?

A. They found some, I don't know in just what part of the section.

Q. 77. Well, in what would be Sec. 14 and 11, 12 and 13 of the unsurveyed land, was there evidence that timber had been cut in there?

A. There was timber cut in there. I didn't notice just what section. Most timber I saw cut was old cut in 15; some cut in 12 and 1 over in the surveyed part and unsurveyed, and it continued across into 12—8; I don't know anything about how far over.

Cross-examination by Mr. HUGHES:

Q. 78. You spoke of a time when you came into this country to hunt cattle—that was before you got to be a surveyor, wasn't it?

A. Yes sir.

Q. 79. You didn't know as much about lines then as you do now?

A. No.

Q. 80. Were you looking over this country to find out where the flag openings were and where the line was at that time?

A. I was hunting cattle.

Q. 81. Not paying any attention to those things at that time, were you?

A. Why not particularly, just simply going along.

Q. 82. When did you became a surveyor?

A. About 14 years ago; I have been at it regular about that long.

Q. 83. When did you first run any lines in this township?

A. It has been ten or twelve years ago since I first run lines in this township.

Q. 84. Where was that?

A. In the northwest part of the township.

Q. 85. Northwest part—what section did you survey there?

A. Well I didn't survey any particular section; just simply run down there and found some corners; found the corner of five and six; found the corner of 31 and 32 and then set off for this corner

and run down this line of five and six, seven and eight, and continued south to the corner of seven and eight, and 17 and 18.

Q. 86. Is that all?

A. That is about all at that time. That was when I was
41 first elected county surveyor.

Q. 87. Well that survey did not take you within two miles of this unsurveyed land we are talking about, did it?

A. I found the corner of 15, 16, 9 and 10 about ten years ago.

Q. 88. You have never, prior to the trip you made in November, 1907, undertaken to run the meander line in question around the unsurveyed lands which are in controversy in this suit, have you?

A. Which part are you talking about?

Q. 89. All of it.

A. No.

Q. 90. Is it not true that such knowledge as you had prior to that time of the unsurveyed lands in controversy in this cause was such as you had acquired in casually passing through it?

A. Why that is all I done, was to go through it. Yes, I wasn't surveying it.

Q. 91. You were not interested in any way in knowing where the line was between the surveyed and the unsurveyed land?

A. No sir.

Q. 92. In answer to a question, you stated that this timber upon the surveyed land was there at an early date?

A. It was there the first time I was there.

Q. 93. The same timber that is there now?

A. I don't know that it is the same, but it looks the same.

Q. 94. Hasn't it grown any?

A. Well, it probably has; I guess it has grown some.

Q. 95. Now you have been acquainted with the timber business in a general way throughout the St. Francis bottoms, have you not?

A. Yes sir.

Q. 96. This territory in controversy would be considered cottonwood land, would it not, as a timber proposition?

42 A. Well, I rather think it would be more of a cypress proposition, if I was out hunting for cypress.

Q. 97. You think cypress constitutes the greater part of the valuable timber on the unsurveyed land?

A. I don't know that it does, but if I was looking for cypress I would say that I had a pretty good cypress proposition.

Q. 98. These two timbers, cypress and cottonwood, is the principal timber grown on this land?

A. Yes, that and ash.

Q. 99. The ash is usually small, is it not?

A. Most of the ash that I know of on all unsurveyed land, as a rule, is small, except at Tyronza Lake; they have large ash over there.

Q. 100. There is upon this unsurveyed land also quite a lot of tupelo gum, is there not?

A. I never noticed very much; not in this particular part.

Q. 101. There is a lot of what they call thorn locust in it, is there not?

A. In some patches there is some locust.

Q. 102. That is a small tree, is it not?

A. Yes sir. I know where I saw some about 10 or 12 inches through.

Q. 103. Would you consider that large, or small?

A. Pretty large; I don't know whether that is the largest, though, or not.

Q. 104. From your observation of those trees, is that a large one?

A. Pretty good size; I did not measure those trees; I tried to find the corner and cut some of them.

Q. 105. Cypress trees will grow in water, will they not?

43 A. I think so. I see them in water.

Q. 106. You see very large cypress sometimes in sloughs and in the bayous of the country, do you not?

A. Yes sir, very large ones, too.

Q. 107. You see it growing around the edges of lakes too, do you not?

A. Yes, all up in St. Francis you know you find large cypress out in St. Francis Lake in different places all along.

Q. 108. Now cottonwood also is a timber that don't grow on the hills, isn't it?

A. I don't know; I never saw any on the hills.

Q. 109. It is a tree that requires a damp, rich soil, is it not?

A. I don't know about that.

Q. 110. Did you ever see any grow where there is not a damp, rich soil?

A. I never saw it grow anywhere except in the Mississippi Valley, and a little in Oregon.

Q. 111. You have travelled around a good deal, haven't you?

A. Well I don't know.

Q. 112. You have seen timber in other parts of the United States than in the St. Francis Valley—you have seen timber in Oregon, haven't you?

A. Yes sir, I saw some cottonwood up there in one particular valley that growed a little bit up on the hillside, and is the only place where I ever saw it grow on the side of a mountain.

Q. 113. Is it true that in the South you have never seen cottonwood except in the bottoms?

A. I nevrr did that I know of. Take the cottonwood area you know from a general standpoint, it is a small area of country.

Q. 114. Did you pay any attention to the size of the tim-

44 ber or the character of timber on different sides of this meander line as you ran it?

A. I did not pay any particular attention to that part of it because I couldn't watch what I was doing and that too.

Q. 115. You have followed the lines made by Government surveyors in a great many portions of this country, have you not?

A. Yes sir.

Q. 116. And have followed these meander lines in numerous instances?

A. Yes sir, in different places.

Q. 117. Now from your observation from the lines run by Government surveyors around bodies of water, did they undertake to follow every crook and turn of the land?

A. No sir.

Q. 118. They would run across tongues of land that jutted out in water of inconsiderable size, would they not?

A. They run across tongues of water that run out into the land, too. You know a surveyor don't notice on the good land as much as he does when he gets in water a little bit beyond the extent of his boots; then he begins to take notice as to how he is going to get across.

Q. 119. What I mean though, is that surveyors run an approximate line when they are meandering a body of water, and make no effort to be precise as to the exact quantity to be excluded?

A. They make lines that I can't see no cause of making; I don't know why they do it.

Q. 120. I am asking you whether or not that is the usual practice of Government surveyors so far as you have followed their lines, that they leave out tongues of land that run out, and run across tongues of water that run in, in an apparent effort to approximate the quantity of land surveyed?

A. That is about the way it is done, from the best I can tell. In some places in the country, I find the meander line to run on just as good land as there is in the country, just as good as ever since I can remember.

Q. 121. You don't remember its condition in 1850, do you?

A. No, I can't remember. Cane Island in the latter part of the 60's was good land—just as good as now, unsurveyed land.

Q. 122. What was your business prior to the time you became a surveyor?

A. Steamboating on the river.

Q. 123. How long have you been steamboating?

A. All together, 12 years Only four at that time.

Q. 124. When you became a man, what did you first begin to do, to make a living?

A. The first work that I ever did that I ever made any money out of I bought furs.

Q. 125. Where was your place of business?

A. I worked for some Jews at Lake City; worked for them when I was only a boy.

Q. 126. What did you do next?

A. I don't know that I remember; just did anything I could get to do; farmed a little; but I made more money those days out of furs than anything else I could do. I travelled over the country buying the furs.

Q. 127. Where did you travel?

A. As far up in the edge of Missouri and down in this country. Wasn't no railroad here then.

Q. 128. How did you get about?

A. In a dug out; sometimes on a horse. I came right
46 down in Section 10, I know where the camp was there in Section 10 in this 12-7.

Q. 129. When was that?

A. I don't remember the year—in the 70's.

Q. 130. Was the camp on surveyed land?

A. Right by the chute—wouldn't think it was on surveyed land. I know just where the camp was—I can go to it now.

Q. 131. Did you catch the animals yourself?

A. No sir, I bought them.

Q. 132. Your business was to go around and buy from trappers, was it?

A. Yes sir.

Q. 133. What did you do after you quit the fur business?

A. Well sir, I run a shop a while in Kennett.

Q. 134. How long?

A. A couple of years.

Q. 135. What next?

A. I worked in the Post Office.

Q. 136. How long?

A. About a year and a half; from then I was on the road a while, selling machinery, oil, belts, etc.

Q. 137.How old were you then?

A. Somewhere in the 20's.

138. What next?

A. I came do*nw* here to steamboating.

Q. —. How long did you steamboat?

A. Well at three times I have steamboated twelve years; four years each time.

Q. 140. What did you do in the meantime?

A. I did not do very much of anything.

47 Q. 141. You didn't steamboat on the Right Hand Chute, did you?

A. No sir.

Q. 142. And when you quit steamboating you took up surveying, and became county surveyor of Craighead County about when?

A. I don't remember the year now, probably 1896 or 1898. I don't remember. I had worked with surveyors a good deal before that at different times—have been helping surveyors ever since I was 11 years old.

Q. 143. You spoke of some oak and some gum on this land; there is not very much of this timber, is there?

A. I did not go around it to look.

Q. 144. It grows in spots, doesn't it, in the highest places?

A. Yes sir.

Q. 145. To what extent did you go around over this unsurveyed land?

A. I went across between sections 12, 11 and 14, 10 and 15, on or near the line.

Q. 146. Do you mean that you ran lines across there, or that you walked across?

A. That is when we went across taking pictures.

Q. 147. You didn't run any lines?

A. No, I did not.

Q. 148. Your observation of the timber is derived chiefly from what you saw on the line, is it not?

A. Mostly, yes.

Q. 149. You have never been in the mining business, have you?

A. No sir.

Q. 150. Did you ever study mineralogy?

A. I never did.

Q. 151. Do you know whether or not this substance of which Mr. Norton spoke as being found on these lands is a mineral or a vegetable substance.

48 A. I do not, I never studdied that business. I have been told that coal is formed from vegetation.

Q. 152. Wood sometimes petrifies, does it?

A. You have got me. I never petrified no wood. I wouldn't know what to do.

Q. 153. I am asking you if you know whether or not trees could petrify and become solid like a rock?

A. I have heard they do, but when it comes to my own knowledge of it, I don't know.

Q. 154. In running the meander line, did you find that the field notes would check up correctly with your surveying?

A. No, I found they won't.

Q. 155. You had to throw away a good deal sometimes, did you not?

A. Yes, and add on.

Q. 156. Add on?

A. Yes. Here is a line in Section 22 if you go by the field notes it would run right into Little River—had to throw away some there to keep out of the river.

Q. 157. Are you acquainted with the line that was run by Mr. Collier under the direction of Mr. Omberg up there?

A. In some places.

Q. 158. Very little difference in the lines run by you and him, is there not?

A. About 100 feet in one particular place where I had the Government corner, he makes it 100 feet. The tree is still standing.

Q. 159. As a general rule, your surveys coincided practically, did they not?

A. I did not go over his. I don't know.

49 Q. 160. Did you run any levels?

A. Not in these surveyed lands I did not. I did in Tyronza.

Q. 161. You say that you have lived in this country all your life?

A. Pretty well all my life—not all my life. I was born and raised here.

Q. 162. Well your home has been near Lake City in Craighead County most of the time, has it not, since you have been in this country?

A. Yes sir.

Q. 163. Your business did not take you upon this unsurveyed land in controversy did it, as an ordinary thing?

A. No sir. Not as a rule.

Q. 164. You were very seldom upon it, were you not?

A. Never was on it very often.

Q. 165. It is rather a remote place from Lake City, is it not?

A. There is a road that comes from Mangrum down here above the chute in Section 10, and takes down the chute in Section 16 and crosses the right hand chute.

Q. 166. Where does it cross the right hand chute?

A. Section 16.

Q. 167. What section would it come on, then?

A. It crosses the river at 16; I think it runs off at 22; it strikes the chute in Section 10.

Q. 168. It runs for quite a distance on the west side of the chute, does it not?

A. That particular road that goes up to what is known as Cottonwood Crossing comes across in Section 10, and comes down through Section 15.

Q. 169. Your affairs very seldom take you down that road, did they?

50 A. As a surveyor?

Q. 170. Any way?

A. I used to come down there to survey up on Little River.

Q. 171. You very seldom traveled that road?

A. I come down there to look at the land.

Q. 172. What land?

A. All that.

Q. 173. You never surveyed any land in this township except in this northwest corner?

A. That is where I surveyed first. You see I lived seven years on a farm when I was county surveyor within five miles of this unsurveyed land.

Q. 174. Well I was trying to get you to say a while ago what surveys you had made here since the ones you spoke of in the northwest corner of the township. Have you ever made any other surveys in the township?

A. Let me see; away back, a long time ago.

Q. 175. I don't care when.

A. I don't remember of making any. You know I worked for Anthony over here in this township—done quite a lot of work.

Q. 177. Where?

A. It was in the west part of this same township.

Q. 178. In what section?

A. I ran all of the lines when I was with Anthony between 5 and 6, 7 and 8, 17 and 18 and to the meander line between 19 and 20. And also the line between 6 and 7, 7 and 18 and 18 and 19, and also the township line between section- 6 and 31, the township line of 12 and 13, and then I also run over there in this unsurveyed land up in the northwest corner of this township.

Q. 179. State whether or not this territory in controversy was subject to overflow at any time within your knowledge?

51 A. It has been overflowed by the Mississippi River.

Q. 180. It was overflowed periodically up to the time of the construction of the St. Francis Levee, was it not?

A. Since 1882; before that I never remember seeing it overflowed.

Redirect examination by Mr. NORTON:

Q. 181. Mr. Sage, where were you living at Lake City, that is in the sunk land country, isn't it?

A. Right near; adjoining on them.

Q. 182. When you are in Kennett, Mo., that is still in the sunk lands, isn't it?

A. Yes sir, just near there.

Q. 183. Has there ever been a time since you were a grown man as much as a year that you were not in those sunk lands?

A. No sir, even when I would go out west, I never stayed long enough to be away a year. I made four trips, and would get back anywhere from one month to six months.

Q. 184. When living on the farm you were on sunk land, were you not?

A. Yes, that is when I become acquainted with the fact that there was lots of land that was not sectionized that was good in that part of the country. Of course I knew Cane Island before.

Q. 185. Cane Island is unsurveyed, is it?

A. Yes sir, most of it.

Q. 186. You say that is where you were born?

A. Yes sir.

Q. 187. Good high farmin- land, is it?

A. Yes sir.

Q. 188. A considerable part of it in cultivation?

52 A. Yes sir.

Q. 189. Well now, for how long has some of it been in cultivation?

A. I don't know; ever since I can remember.

Q. 190. Been farms on it ever since you were old enough to remember?

A. Yes sir.

Q. 191. And is its area meandered out by Government surveys?

A. Most of it is, although some of it is sectionized on the north end.

Q. 192. The lowest part then is meandered out by Government surveys just the same as the unsurveyed land in 12—7 is meandered out?

A. Yes sir. There is something like 2,200 acres on Cane Island of good farm land and meandered out. I surveyed it while I was County Surveyor, under the direction of Judge Rogers, who was County Judge of Craighead County.

Recross-examination by Mr. HUGHES:

Q. 193. You spoke of Cane Island; it is quite a large body land, you say; why is it called an island, or why is it an island?

A. Why is it?

Q. 194. Yes, what makes it an island?

A. Cane Island Slough cuts it off from Poplar Ridge.

Q. 195. What is Cane Island Slough? Describe it.

A. Cane Island Slough is a low, wet country that comes out St. Francis Lake and back into it again.

Q. 196. How large is it—how wide is it?

A. It is between a quarter and a half mile wide, I guess.

Q. 197. Does the river run through it?

A. The water out of the river runs through it—some of it; course it don't all run through.

53 Q. 198. Does the water of the St. Francis River ever r through it except when the river is very low?

A. Yes, when the river is low it doesn't run through it.

Q. 199. And the fact is that the Government surveyors ha meandered Cane Island Slough at that point, have they not, inste of surveying the Island?

A. No sir, they meandered right up through Cane Island Slou and surveyed over Cane Island up towards the northeast.

Q. 200. But they did meander Cane Island Slough to the sout

A. At the south end they meandered up the slough.

Q. 201. In seasons when the river is at ordinary height, there a good deal of water in Cane Island Slough, is there not?

A. No sir, not at normal height.

Q. 202. There is water in it all the year, is there not?

A. No sir, if there is it is very small places—not all the year.

Q. 203. It depends upon whether it is a wet or a dry year, does not?

A. Yes sir.

Q. 204. The season past, this autumn, has been a very dry seas has it not?

A. Well, I don't know whether it has or not. I was not here ve early, I was in South Arkansas.

Q. 205. Well at the time you made this survey of these lands the sloughs and bayous in the woods were dry, were they not?

A. Practically so this year.

Q. 206. Have they always been dry that late in the season in yo experience?

A. No sir.

54 Q. 207. The- it was an extraordinary dry season, was not?

A. Well, I will tell you how it was. I was in South Arkan and I came up here in—I think November, and did not encoun much water until the fall rains set in.

Q. 208. When did they set *it?*

A. Since I stopped surveying up here I have been back in Sou Arkansas, and it is all under water almost. I came back yesterd

Q. 209. Do you know how it has been for the last week or two?
A. Where?
Q. 210. On this land we are talking about?
A. No, I have been down to Blissville—just got back, and have not been out here since Christmas.

And further deponent saith not.

55 *Deposition of J. M. Gann.*

J. M. GANN, being first duly sworn, testifies as follows:

Q. 1. Did you haul some timber at some time within the last two or three years from what is called the unsurveyed lands in Township 12, Range 7?
A. I don't know as I did haul any.
Q. 2. Do you know about its being done?
A. Why I don't know. I wasn't round there much. There was a whole lot of hauling in that country, but I don't know where it was at.
Q. 3. Were you connected with it in any way?
A. Well, I hauled some. I believe it was in Section 24. I think it was—I ain't sure. It has been three or four years ago. I think the last hauling I done was about three years ago.
Q. 4. How long did you haul in there?
A. Off and on for ten years.
Q. 5. Did you haul from any other places up there?
A. Not me.
Q. 6. You did not. Now can you give me the names of somebody that did haul?
A. I don't know as I could. I don't know this land called unsurveyed land. I don't know whether it was unsurveyed land or not.
Q. 7. Do you know where the land called unsurveyed land is?
A. I know some of it.
Q. 8. Do you know anybody that hauled timber from there?
A. I don't know that they hauled right from there, but I think Potter hauled some and Andrew Nichols hauled some.
Q. 9. Was that timber on 24?
56 A. Yes, I think it was 24 that I hauled on.
Q. 10. What year was that?
A. The last that I hauled was about three years ago.
Q. 11. Where have you been since then?
A. I have been around here.
Q. 12. Up in that neighborhood any more?
A. Up in there? Yes, a little.
Q. 13. Some have been hauling since then, haven't they?
A. I haven't saw any, but I suppose they have been hauling.

Cross-examination by Judge HUGHES:

Q. 14. Do you remember whether or not the fall three years ago was not a very wet fall up in that country?

A. Well, I believe it was, yes.
Q. 15. Might it not be true now that this hauling was done four years ago?
A. It might have been. I said three or four—it might have been four years ago this fall since the last hauling I done.

Redirect examination by Mr. NORTON:

Q. 16. For whom were you hauling?
A. Who was I hauling this timber for? Chapman & Dewey.
Q. 17. The other men hauling off of unsurveyed land, for whom were they hauling?
A. I suppose for the same ones. I don't know that it was on surveyed land—just heard so.

And further deponent saith not.

57 *Deposition of A. Nichols.*

A. NICHOLS, being first duly sworn, testifies as follows:

(Mr. NORTON:)

Q. 1. Do you know where the unsurveyed land is that we are talking about in township 12, range 7?
A. Yes sir, I think I do now.
Q. 2. Did you haul some of the timber from there within the last year or two?
A. No sir, about three years ago.
Q. 3. How long did you work there?
A. About a month.
Q. 4. Working for Chapman & Dewey, were you?
A. Yes sir.
Q. 5. Some other men working?
A. Yes sir, Mr. Potter.
Q. 6. Do you know what month and year you were there?
A. It was three or four years ago when I was there.
Q. 7. Were there lots of other teamsters?
A. No sir.
Q. 8. How many?
A. None but Potter and Rhodes.
Q. 9. You had a team, and Potter and Rhodes had a team?
A. Yes sir.
Q. 10. Did you work for Chapman & Dewey?
A. Yes sir.
Q. 11. What sort of logs did you haul?
A. I hauled cottonwood.
Q. 12. Do you know what kind the others hauled?
58 A. No, I do not.
Q. 13. Did you ever see any on the bank anywhere?
A. What I saw was cottonwood.
Q. 14. Did you both bank at the same place?
A. No sir.

Q. 15. Could you describe the place where you put your logs on the bank?
A. No sir, I could not.
Q. 16. Could you by a map of that country?
A. No sir.
Q. 17. Did you ever hear what section you were working on?
A. No sir.
Q. 18. Don't know?
A. No sir.
Q. 19. Was any cypress got out by them?
A. No sir, I never hauled any cypress.
Q. 20. Hauled cottonwood all the time?
A. Yes sir.
Q. 21. About three years ago now?
A. Yes sir.
Q. 22. Well, who set you to work?
A. Mr. O. K. Warren.
Q. 23. He set the other men to work too, did he?
A. I don't know about that.
Q. 24. Do you know whether they got their pay?
A. No sir.
Q. 25. Do you know anything about the bends of the river up there?
A. No sir, I am not acquainted with them.
Q. 26. Can you look at that map and tell anything about
59 where you were getting that timber?
A. No sir, I can't tell anything about looking over a map.

Cross-examination by Mr. HUGHES:

Q. 27. You say that was three or four years ago; you don't remember which?
A. No sir, I don't.

Redirect examination by Mr. NORTON:

Q. 28. Did you ever hear of a place up there called Bark Camp?
A. Yes sir.
Q. 29. You know where that camp is?
A. I know where the run is.
Q. 30. Well, isn't that where you were hauling timber, right there?
A. Yes sir, just below it.
Q. 31. How far below it?
A. About a quarter.
Q. 32. What do you understand by Bark Camp Run, a slough?
A. Yes sir, a kind of a slough.
Q. 33. And you were cutting about a quarter of a mile below Bark Camp Run?
A. Yes sir.
Q. 34. Do you know of two camps, one called Little Bark Camp and the other Big?
A. Yes sir, I have crossed both of them.

Q. 35. How far apart are they?
A. I don't know how far apart they are.
Q. 36. A quarter of a mile, or half?
A. Must be about a mile.
60 Q. 37. Do they run east and west?
A. I don't know.
Q. 38. Which one was it you were hauling about?
A. The big one.

Recross-examination by Mr. HUGHES:

Q. 39. In what direction does the Big Bark Camp run, north and south, east and west, or otherwise?
A. Dogged if I know how it does run.
Q. 40. As a matter of fact, it runs down and empties into some stream below there, doesn't it, toward the south?
A. Runs in there into Little River.
Q. 41. When you speak of south what particular point on Big Bark Camp do you refer to? Have you any idea? When you say a quarter of a mile, do you mean a quarter from the mouth of it—from where it starts, or what?
A. You mean where I was camped at?
Q. 42. No, where you cut timber?
—. ——.
Q. 43. What direction was the timber from there?
A. I suppose west of it. East or West, I don't know which was that country does lay in there.

And further deponent saith not.

61 *Deposition of C. T. Easley.*

C. T. EASLEY, being first duly sworn, testified as follows:

(Mr. NORTON:)

Q. 1. Please state your name, age, residence and occupation?
A. My age is 35; I live at Sidon, Miss., or near there; my name is C. T. Easley and I am in the mill business, lumber business.
Q. 2. How long have you been in the lumber business, Mr. Easley?
A. I have been in the lumber business off and on, working at saw mills and manufacturing lumber for myself, for 15 years.
Q. 3. Has it been part of your business to estimate timber?
A. Yes sir.
Q. 4. I mean standing timber in the woods?
A. Yes sir.
Q. 5. Well, have you done a good deal of that, or not?
A. Why I have done a considerable amount, yes sir.
Q. 6. Were you called on during 1905 to estimate timber cut from the land involved in this suit in township 12 north, range 7 east?
A. Yes sir.

Q. 7. Did you go up there and undertake it?

A. Yes sir.

Q. 8. Somebody go with you?

A. No sir, I didn't no one go with me from here. I got a man while I was up there that was with me one day.

Q. 9. For what purpose did you have this man that you got up there?

A. I had him to show me something about the meander line—where I could get on it.

Q. 10. How did you happen to select him?

62 A. Well I understood that he was with Mr. Anthony at the time Mr. Anthony run this meander line.

Q. 11. Did he start you on the meander line?

A. Yes sir.

Q. 12. Were you able to follow it and get round the unsurveyed lands?

A. I did not get entirely around the unsurveyed land; I got in water and kinder lost out—got most of the way over the important part where timber had been cut.

Q. 13. To look at this map, can you tell us the part that you did not get to follow?

A. In the upper part of Section 22 I was not able to follow the meander line all the time. I think that is where it was.

Q. 14. Did you find the timber had been cut there sometime prior?

A. Yes sir.

Q. 15. What kind of timber?

A. Cottonwood timber. The principal part of it was cottonwood; to the best of my recollection there wasn't anything cut in there except cottonwood. I don't remember for certain, but I don't think there was.

Q. 16. Taking this unsurveyed area as sectionized, where was it you found the timber cut? Tell us by sections.

A. Let me see, now; I can't get that part in my mind just exactly. There is section 22—where is 15? I am mistaken; up in here, in Section 15, is where I missed the meander line.

Q. 17. Now tell us what section the timber was cut in?

A. Well the timber was cut here in 15 and I think there was some cut in 14 if I am not very much mistaken now, and 22, maybe some in 23.

Q. 18. Did you make any memorandum about it at the time?

63 A. Yes sir, I did.

Q. 19. Do you know where the memorandum is?

A. Yes sir, I have it in my pocket.

Q. 20. If you have any memorandum that you made at the time, you may look at it to refresh your memory as to where the timber was cut, and all about it.

A. Let's see, (referring to memorandum) there was section 22, 15 and 14, and I have got Section 23 down there, but have got no timber in section 23 on my memorandum.

Q. 21. How do you account for the fact that you have nothing in 23?

A. I don't know. I can't recall. It has been two years ago, and I have studied nothing about it and don't know why it is I haven't got the timber in 23. Now there was some old timber, stumps that had pretty well rotted down, and probably I omitted the timber in 23 to butt off the old timber that was cut, but I don't remember now.

Q. 22. Well now I will ask you how much you found cut on Section 14, and what sort of timber?

A. It was cottonwood. I have 200 trees on 14.

Q. 23. Did you arrive at some conclusion about how many feet there was in 200 trees?

A. Yes sir.

Q. 24. How did you do it?

A. Why I got an estimate of this timber to the best of my ability by measuring the top of the tree, getting the length of the tree from where it was cut off back to the stump.

Q. 25. Couldn't you measure the stump?

A. Sometimes I would measure the stump, and sometimes we butted off, maybe we cut from two to four feet off and
64 measured from where it had been butted off. Of course I did not measure all of it—measured enough to base my estimate on—to get an average.

Q. 26. Well, arriving at it in that way, what did you get as a result of the quantity taken from 14?

A. I got 400,000 in 14.

Q. 27. In 14?

A. Yes sir.

Q. 28. Did you use the same means of getting the estimate in 15?

A. Yes sir.

Q. 29. And how much did you get in 15?

A. I got 2,500,000.

Q. 30. That would be two million, five hundred thousand, wouldn't it?

A. Yes sir.

Q. 31. How many trees did you find cut in Sec. 22?

A. I found 850.

Q. 32. And did you use the same means there to reach the quantity?

A. Yes sir.

Q. 33. How much did you decide they would make?

A Same amount. I estimated there was 2,000 to a tree.

Q. 34. Two thousand to a tree?

A. Yes sir.

Q. 35. You estimate all at 2,000 to a tree?

A. Yes sir, probably there was more; probably not so much. The logs was not there to measure, and I could not tell.

Q. 36. Have you got any date on your memorandum about when it was done?

A. No sir, I don't believe I dated it.

65 Q. 37. Well you may look at that (handing witness a letter or paper) to refresh your memory.

A. Sometime along in November, my report shows November 20th. I began work about the first of November for the Levee Board, and worked until along up in December.

Q. 38. It was sometime before you dated this report that you made this inspection?

A. Yes sir.

Q. 39. What do you then reach as the quantity had from the three sections 14, 15 and 22 in thousands of feet?

A. Well it is 4,600.000. feet.

Q. 40. Well, the timber had been cut in the spring of 1905 and in the fall of 1904, I think. Of course I couldn't tell, but I don't think it had been cut prior to that time from the bark that was on the stumps etc.

Q. 41. Well, you said something a while ago about finding some old stumps, didn't you?

A. Well there were stumps in there that looked like it had been cut four or five years. That may be why that report fails to tally with my memorandum here. I don't know why it is now that I omitted Section 23.

Q. 42. Well do you know now from your memory, or from your memorandum either one whether these older stumps were excluded from your estimates?

A. I think they were; I won't be positive, but I think they were.

Q. 43. As you seem to be in some doubt about it, give us your idea as to what they would amount to if you did not exclude them.

A. Wouldn't amount to a great deal. To give a correct
66 estimate of what they would amount to, I couldn't do it.

Q. 44. Try and estimate it in percentage. What percentage would you say were old?

A. It wouldn't have amounted to over 8% or 10% at the very outside, no how.

Cross-examination by Mr. HUGHES:

Q. 45. Are we to understand you then to testify that outside of 8% or 10%, all the remainder of this timber had been cut not earlier than the fall of 1904 or 1905?

A. No sir, I don't think it had from the looks of the timber and looks of the stumps; the bark was still around the stumps and I don't think it had been cut prior to that time.

Q. 46. You say you have been in the sawmill business?

A. Yes sir.

Q. 47. In Mississippi?

A. Yes sir.

Q. 48. Have you ever operated a sawmill in Arkansas?

A. No sir.

Q. 49. Ever live in Arkansas?

A. No sir. Well I say I never lived in Arkansas; I did live in Arkansas two or three months, at Paragould.

Q. 50. Not in the bottoms?
A. No sir, in the edge of the bottoms.
Q. 51. Did you have a scale stick with you?
A. No sir, I had a tape line.
Q. 52. Did you measure all of this timber yourself?
A. No sir, I didn't measure all of the timber at all.
Q. 53. Well, did you measure the tops and stumps of every tree?
A. No sir, I did not.
67 Q. 54. Just measured a few trees, and guessed at the rest?
A. Yes, measured a few trees to base my estimate on.
Q. 55. And did you have any one helping you?
A. No sir.
Q. 56. How long did you spend in there?
A. I think I was in there some three days; I believe it was. I know I spent the greater part of the week over in here.
Q. 57. You say you don't think you included the old trees in your figures you have given?
A. I don't think I did, but I won't be positive I think I excluded those old trees.
Q. 58. What did you mean when you said a moment ago that you probably omitted the count in 23 in order to offset old timber in other sections? Wouldn't that mean that you had in fact counted the old trees in the other sections? There would be nothing to set off the timber in 23 against if you had not counted the timber in 23, would there?
A. I don't know why I omitted to put down any trees in Section 23 on my memorandum and then give it to them on my report.
Q. 59. The explanation you offer is you let 23 go in order to offset old timber in other sections. If that is correct, you counted some of the old stumps?
A. Yes, I counted some of the old stumps.
Q. 60. Who showed you this line you speak of?
A. I think it was a man by the name of Shultz.
Q. 61. Is he a surveyor?
A. No sir, I think not. He was with Mr. Anthony at the time he run out those section lines.
Q. 62. And you only estimated timber on the lake side from that line; is that correct?
68 A. Yes, on the lake side.
Q. 63. That is the only part you estimated?
A. Yes sir.
Q. 64. You didn't include anything but cottonwood timber?
A. To the best of my recollection I didn't while I worked for the Levee Board. I estimated timber that wasn't cottonwood, but don't think it was on this land.
Q. 65. What has been the extent of your experience in estimating timber?
A. I have been estimating timber and saw milling for the past ten years.
Q. 66. How big a sawmill do you run?

A. Our sawmill now is about eight or ten thousand capacity.
Q. 67. Per day?
A. Yes sir.
Q. 68. That is very small, isn't it?
A. Yes sir, small mill.
Q. 69. Are you still operating that mill?
A. Yes sir. Well, it is not in operation now either; since the panic struck us we have shut down.
Q. 70. You were operating it at the time you made this estimate?
A. No sir, I was working for the Levee Board at that time.
Q. 71. In making this estimate, what precautions, if any, did you make to avoid making the estimate twice?
A. Stepped off my land in strips.
Q. 72. How did you mark it?
A. I had an axe and blazed sometimes.
Q. 73. When you didn't blaze, how would you get along?
A. I would observe trees, etc. in my strips.
Q. 74. Did you check the stumps, or mark them in any 69 way?
A. No sir, I didn't check them.
Q. 75. Wouldn't that have been a safer way?
A. Yes sir, that would have been a safer plan.
Q. 76. That is the usual way among timber men, isn't it?
A. Yes sir, but I never do check my trees.
Q. 77. Don't you think that a man that would check the trees would be more apt to be accurate?
A. I think he would; he would be sure not to count that stump any more if he went close enough to it.
Q. 78. You don't know who cut this timber?
A. No sir, I do not.

Redirect examination by Mr. NORTON:

Q. 79. How did you work the strips in order to have some guarantee against counting the same tree a second time?
A. How did I work the strips?
Q. 80. Yes, how wide were they?
A. I would usually take a strip from 50 to 75 yards wide, where I could see that I didn't go back over the same ground that I had already counted over.
Q. 81. And you stuck to that rule and crossed and re-crossed the country until you had finished it?
A. Yes sir.
And further deponent saith not.

70 *Deposition of James Anthony.*

Mr. JAMES ANTHONY, being first duly sworn, testifies as follows:

(Mr. NORTON:)

Q. 1. Please state your name, age, residence and occupation?
A. James Anthony, Civil Engineer, State of Arkansas.
Q. 2. Your age?
A. I am 58.
Q. 3. Are you familiar with the country and township 12 north range 7 east?
A. Yes sir, I know all of it.
Q. 4. How long have you been acquainted with that part of Arkansas?
A. That township, about nine years.
Q. 5. About nine years. Well, have you been familiar with the northeast part of the State, including the sunk lands, longer than that?
A. Yes, I have been familiar with the sunk lands and the land in general for 32 years.
Q. 6. I will ask you if you had the meandering lines run around what they call the unsurveyed land in 12-7?
A. Yes sir, I had them run.
Q. 7. When did you do that?
A. In 1901.
Q. 8. Did you hear Mr. Easley testify a few minutes ago?
A. Part of it.
Q. 9. He said that a man by the name of Shultz showed him the line.
A. Yes, I told Mr. Easley to go and get Mr. Shultz to show him the line.

71 Q. 10. How did you know that Shultz knew anything about it?
A. Shultz was chain carrier at the time the survey was made.
Q. 11. You mean your survey locating the meandering line?
A. Yes.
Q. 12. Was the meandering line blazed when you found and located it?
A. No sir.
Q. 13. Was not blazed?
A. No sir. It may have been blazed, of course it was blazed following the old survey, but we never hunted for the old blazes.
Q. 14. Then what did you do; run the line by the field notes?
A. Certainly, we run it between corners. In my surveys I never care about hunting for old meander lines; it is an unknown quantity. Sometimes we run them and sometimes we don't. Sometimes we run them in camp at night, if convenient, we run them.
Q. 15. You would find the corners and blaze them, would you?
A. Yes.

Q. 16. Well, you blazed them when you found them, then?

A. We blazed the line that we run; as long as we intersected from corner to corner we knew we were right.

Q. 17. Well there was that much left then as a sign to get hold of and show Mr. Easley?

A. Yes, he has the blazes to follow.

Q. 18. How frequently were you first and last in this particular unsurveyed area and around it?

A. In that particular part?

Q. 19. Yes.

A. Why I have been there from 1899, that was the first time I was in there, and from then on, off and on until 1901 and 1902 the survey was made, and I have at divers times gone across
72 that land since then.

Q. 21. Have you any opinion that is at all definite about the amount of opening that is in there on that unsurveyed land—the flag opening—what would the area be?

A. You mean on that particular land?

Q. 22. Yes.

A. I suppose there is an opening of possibly five or six hundred acres of what I suppose you would call an opening, but it has what we call pole express growing on it.

Q. 23. When I asked you the question I had more in mind flag openings with no character of timber—how much of that kind would you say there is?

A. On that particular land there is only two spots that you can call flag openings and that is the right hand chute after it turns east in Section 15 and leaves the ten or twelve foot bank and runs out in Section 10 or 11—it simply spreads out without any bank to it. A flag opening like we have over in 12-6 does not exist in 12-7, I mean the ground where we walked over it is ground at the bottom even if there is water standing on it, but when you come over here in 12-6 there is fully three feet of mud.

Q. 24. I want to ask you now, Mr. Anthony, about the general character of timber on the unsurveyed land?

A. The character of timber on the unsurveyed land is just about the same as the character of timber on the surveyed land. As a general rule in 12-7, the character of timber is better on the unsurveyed land than on the surveyed land.

Q. 25. What kind of timber is it, Mr. Anthony?

A. Principally cottonwood.

Q. 26. What size trees did you see in there?

A. What size trees?

73 Q. 27. Yes.

A. Well you will find but very little difference in the cottonwood timber. Wherever cottonwood grows it is uniform and not very much difference in the growth. It will average as a rule about 450 feet to the log.

Q. 28. How long a log do you mean?

A. The trees will generally grow from five to six logs to the tree.

Q. 29. Now the gum trees, about what were their dimensions?

A. Well the gum trees on that land are very similar to the cottonwood—they grow larger and they grow smaller. What I mean is there is a larger difference in the growth of gum timber on 12-7 than there is in the cottonwood.

Q. 30. Well were there any full grown gums in there?

A. I have never seen a full grown gum. If you will give me an indication when any tree is full grown, I will be able to tell.

Q. 3 . Were there any gum trees in there of the size used for saw logs?

A. Oh yes.

Q. 32. Any ash and cypress?

A. Yes, ash and cypress. The cypress is small, what little there is of it. It is young cypress.

Q. 33. When you have been in that area has it always been dry or always wet? I want to get the idea of how much is dry except in freshet times.

A. When I have been in that territory it has always been dry. Of course it is covered with water now since the levee is out on account of the ditching and damming up of the levee and everything. At the time I surveyed it, it was absolutely dry; even the river was dry; there was no water running; even the St. Francis River
74 was dry; it got so dry all the fish died.

Q. 34. That was the fall of what year?

A. 1901.

Q. 35. You say there was no water running through Little River—that is what you mean?

A. To illustrate how dry it was, I mentioned St. Francis River. There was no water running in it, so little water running in it that the water would be white with dead fish and we had to run away from the river; could not camp on the river.

Cross-examination by Mr. HUGHES:

Q. 36. The condition of which you speak; the very dry condition, is not at all usual in that section, is it, Mr. Anthony?

A. No, 1901 and 1902 are the only two years it has been that dry.

Q. 37. Well the times that you have gone in here when you speak of it being dry, you went in because it was dry, did you not?

A. Yes.

Q. 38. Now you say you had this land run; do you mean that it was run by some other person than yourself; employed by you?

A. Oh yes, I had Mr. Tom Neely run this out.

Q. 39. Were you in the party?

A. Yes, I was along with them.

Q. 40. How much of the time?

A. I was with them altogether in 12-7, I think.

Q. 41. You stayed there and assisted them all the time, did you?

A. I stayed there and had another surveying party in 12-6, and stayed in between the two.

Q. 42. Did you spend about as much time with one party as the other?

75 A. No, I had Mr. Neely, he was the best man I ever had in there.

Q. 43. He was the man that was running the lines in 12-7?

A. Yes.

Q. 44. So you gave your attention more largely to the other party in 12-6 then?

A. Yes.

Q. 45. In running the lines, did you find the government corners when you made this survey?

A. Did we find them?

Q. 46. Yes, How were they designated?

A. Designated. You mean the U. S. Corners?

Q. 47. Yes, were they blocked out, or by any means revealed?

A. In some instances they were blocked out.

Q. 48. State in what instances.

A. Where somebody had been in previous to that survey and surveyed. The County Surveyor, generally.

Q. 50. Tell where, if any, the Government corners were revealed and marked out to you and your party.

A. They were revealed—I don't know whether we blocked them out or not, but this first line that I run here, the old corner between 15, 16, 9 and 10 was there; I don't think we blocked that out because the corner is in plain evidence along beside the main road, and from there I started them and they run to the different corners and run out to section lines. There is one corner that I distinctly remember.

Q. 51. Will you explain what you mean by saying that you would find the corners and then run the meandering line in your tent at night?

A. Because that is the only way that any one can do. When you are surveying you have got to establish two corners and then
76 if you have got an uncertain line between these two corners you have got to run from one point to another, and if you run to one point and gain the other, that is evidence that you are correct. If you undertake to run the meandering line from one corner, taking a change of hitting the other, which is an established corner which you have got to hit, or you have got to intersect, and that is the only way you can — the meandering line, is to run your section lines and establish your corners and run the meandering lines in between these corners.

Q. 52. How can you do that in your tent at night?

A. Well, I don't know that it is worth while——

Q. 53. Yes it is worth while for you to answer my question. I am asking you for information. I am not a surveyor and do not understand some of these things, but no matter how ignorant I may be on the subject, the thing for you to do is to answer my question. I want to know how you can run the meandering line in your tent at night.

A. Well if you come to the meandering line, you are mistaken. I never said a man could run the meandering line in the tent at night, but sometimes we run lines at night; that is, for example,

when we go out on the prairie and run the north and south lines, the boys very often run the east and west lines in the tent at night, and I have been compelled to put them back in the field to run the east and west lines and put in the corners. I am telling you from my experience on U. S. Surveys.

Q. 54. And you say that the best timber in 12-7 grows on the unsurveyed land?

A. No, I said as a rule there is better timber on the unsurveyed land; it will estimate up more per acre than on the surveyed land, and especially the cottonwood.

Q. 55. Is that what you meant by better timber, what
77 there is of it is better than that on the outside?

A. Yes, I meant the timber is better, what there is of it.

Q. 56. What is the most valuable timber for lumber purposes that you have seen upon this particular tract of unsurveyed land?

A. Cottonwood.

Q. 57. The cypress you say is small and young?

A. The cypress is nearly all pole cypress, unless where you go out in the opening you might see one or two large trees.

Q. 58. Have you compared, Mr. Anthony, the meander line run by you with the line run by Mr. Sage?

A. No sir.

Q. 59. Have you been on the land in controversy since Mr. Sage's line was run?

A. No sir.

Q. 60. You are financially interested in the result of this suit, are you not?

A. Yes sir.

Q. 61. State how that interest arises.

A. Well I originally had the contract from the Levee Board for the purchase of all this land, and the intention was to survey it out and buy it.

Q. 62. Your intention was?

A. Yes, and at that time, while I was surveying this land out, and it was surveyed only on those places where the channel or where navigable water or deep water runs through any part of it, we had to survey it out in order to ascertain how much river there was in this land, and I found that people all over the bottom around here were just simply helping themselves to this timber on this unsurveyed land. I made the Levee Board cognizant of this fact and told them that I wanted to protect the land of being denuded of timber, and they entered into contract with me to give me the supervision
78 over all Levee Board land, surveyed and unsurveyed, and if anybody was found cutting timber off of it, for me to get witnesses to enable the Levee Board to prosecute the parties and recover for the timber.

Q. 63. You undertook, likewise, to procure evidence that they had title to these tracts of land, did you not?

A. No sir.

Q. 64. You did not?

A. No sir. I would not undertake that. I, however, told the

Levee Board that we were pe-fectly willing to push it with the title they had.

Q. 65. Who was to bear the expense of this litigation that you speak of?

A. Of the litigation?

Q. 66. Yes.

A. Well I was to furnish enough evidence to convict the people that cut the timber, and the Levee Board does the prosecuting.

Q. 67. When you speak of convicting, you mean recovery of a money judgment for damages, do you not?

A. Yes sir.

Q. 68. Mr. Anthony, you have investigated the questions involved in this controversy for some years, have you not, and given thought to them as an engineer?

A. Yes sir, I have thoroughly investigated the land and the law and all that I could find written about the sunk lands.

Q. 69. What, from your historic knowledge or otherwise, has caused the depressions in Eastern Arkansas known as the sunk lands?

A. In reference to that question, the Encyclopedia Brittanica, which I think is good authority, shows in the 5th edition, under the head of geology, that from the earthquakes that have happened on the surface of the earth all over the world, after the quake
79 the ground becomes depressed. On the Pacific Coast, all from Chili north, and even in the United States where the level is changed it has been changed from four to five feet all the way, over on the Pacific Coast and everywhere, and going over this question pretty thoroughly you follow the editions all the way down to the 9th edition, which is the latest out, and is the one I will quote. Prof. ——, Professor of Geology in the Edinburg University, states that the sunk lands came into existence by the earthquake of 1811 and 1812 which devastated the Mississippi Valley, and that land along the streams in the Valley became depressed from four to six feet and the water of the rivers spread over the land so as to form lakes with the tops of the trees sticking out.

Q. 70. That earthquake of which you speak was known as the New Madrid Earthquake, was it not?

A. The New Madrid Earthquake, yes. And the topographic condition of the country to a great extent corroborates them. You find in Section 15, for example, in the northwest corner you will find that a ten or possibly twelve foot bank shows clearly.

Q. 71. The bank of which you are now speaking is on the east side of the right-hand chute?

A. Yes, from there eastward the right hand chute in quarter of Section 11 spreads out flat and goes up and continues flat up through section 2 and section 1.

Q. 72. Do you find in the bed of these sunk lands slabs, logs, remains of old trees that perhaps stood there at the time of the earthquake?

A. I cannot say that I have, but I have found in the beds ob-

structing the channel stumps, not where timber has rotted, but where it has been cut.

Q. 73. Have you ever explored those sunk lands, dug into
80 them in any way to see the formation of the soil?

A. Well, to this extent, that I have driven pipe down with any point, just driven inch and a quarter pipe and pumped; I find the same soil underneath pumping out; in other words, sand. On section 15 and 14, and in fact on all unsurveyed land another thing that bears out the sunken position of the land is its unevenness so that when the high water comes up, that is before the levees were built and the water in those chutes and rivers ran in and came to a low point, the water overflowed into that low point and rushed across that land, and that accounts for the land as a rule all over the unsurveyed land being washed away. But the current in olden times when the Mississippi River overflowed and come in through here, the current was terrific.

Q. 74. When the overflow came over this land it would spread out over the depressed portion and form a strong current at the place where it made its exit from the unsurveyed land?

A. Yes, and the current would greatly increase until it reached the main channel of the river.

Q. 75. And that would cause the washing and moving of the soil?

A. It explains why we on the unsurveyed land find the soil all washed away from the roots of the trees. There is another thing that has come up very frequently about these unsurveyed lands; we have believed that when the surveyors came to this unsurveyed land they did not know what it was and made some sort of mistake, but we find in the field notes throughout all the different townships that the surveyors have not made any mistakes. If you will look over the field notes you will find that invariably the surveyors whenefer they come to the sunk lands, or what is known as the sunk lands, they invariably state so in the notes, and where the sunk lands are
in 12—7 the right hand chute or Little River is distance
81 from the sunk lands about ½ mile, they designate that fractional corner, the right hand chute of Little River, so that it will be plainly seen from the field notes that a surveyor at that time, 1852, which is the earliest record that I find of these lands as found in the 5th edition of Encyclopedia Brittannica, was cognizant of the right hand chute proper and the sunk lands. They follow this rule in all the townships that lie between 11 and 16.

Q. 76. In the days before the St. Francis Levee protected the land, how deep were the overflows on this particular portion of land in controversy in this cause?

A. Do you want the maximum?

Q. 77. Well you might say maximum and average.

A. I should think the water at that time would be nothing less than 10 feet. I will give you one illustration, in 1883 we went south of Osceola and in through the country. We went in a skiff, in accordance with orders from the U. S. Government, from Plum Point to Crowley's Ridge, nearly straight across the country. Of

course that is the highest water we have ever had. The most volume of water the Mississippi ever carried was in '83. It sunk my entire fleet out in a cotton field.

Redirect examination by Mr. NORTON:

Q. 78. In these surveys in 12-7 that you more or less examined; how far from the ground did you find the government marks on the trees?

A. Well there is very little rule in finding them. You know you find them just the same distance as if I were to make them today; it is just simply as a man swings his axe, that is where you make the mark and take out your block to put the figures on; there
82 is no difference in the U. S. about the height.

Q. 79. Then you mean the old Government marks that you find are just at that distance from the ground on the tree as they would be if a surveyor would make them today?

A. Yes; in some instances you will find them a little bit higher.

Q. 80. A little bit higher?

A. Yes, where the ground is washed out.

And further deponent saith not.

83 *Deposition of W. M. Potter.*

W. M. POTTER, being first duly sworn, testifies as follows:

(Mr. NORTON:)

Q. 1. What is your age, Mr. Potter?

A. Forty.

Q. 2. Where do you live?

A. Ten miles north of Marked Tree, Ark., on Little River. My business is farming.

Q. 3. Well what was your business in the fall of 1904 and spring of 1905?

A. Same business that I am in now; worked in timber in 1904 and in the spring of 1905 was farming.

Q. 4. Do you know what they call the unsurveyed land in 12—7?

A. Yes sir.

Q. 5. Did you haul any timber there in the fall of 1904?

A. Yes sir.

Q. 6. Have you got any way of telling about how much you hauled?

A. No sir, I couldn't tell.

Q. 7. Do you know about what section you hauled from, assuming that they were laid out in sections?

A. I hauled some off of 15 and 14.

Q. 8. And you don't know how much?

A. No sir, there was no big lot come off of unsurveyed land.

Q. 9. What kind of timber was it.

A. Cottonwood.

Q. 10. What kind of teams did you use?
A. Used mules.
Q. 11. How long did you work in there?
84 A. Three months that year.
Q. 12. How many loads would you make a day?
A. From seven to fifteen, in some places was working on surveyed land close to the river.
Q. 13. How much timber would you haul at a load?
A. I tried to make an average of a thousand feet a load. The ground was very dry.
Q. 14. So you would haul seven or eight throusand feet per day, and worked for three months?
A. Not on *in*surveyed land three months. I don't suppose I worked on there over a month; I am certain I did not.
Q. 15. For whom were you working?
A. For Mr. Dewey.
Q. 16. That is the same as the Chapman & Dewey Lumber Company?
A. Yes sir.
Q. 17. Have you hauled any there since?
A. No sir.
Q. 18. Was some one else hauling there at the same time you were?
A. Yes sir.
Q. 19. Who?
A. A man by the name of Rhodes and a man by the name of Nichols.
Q. 20. Did they use mules too?
A. Yes sir.
Q. 21. Anybody else besides them?
A. No, not that year.
Q. 22. Not that year?
A. No sir.
Q. 23. Was that hauling in the spring of 1905?
A. No sir, not a bit of it.
85 Q. 24. That was when Mr. Rhodes was there, and Nichols?
A. Yes sir.

And further deponent saith not.

86 *Deposition of O. K. Warren.*

Mr. O. K. WARREN, being first duly sworn, testifies as follows:

(Mr. NORTON:)

Q. 1. About what is your age, Mr. Earren?
A. Fifty.
Q. 2. Do you live here at Marked Tree?
A. I live at Jonesboro.
Q. 3. What is your business?
A. Timber foreman for the Chapman & Dewey Lumber Co.
Q. 4. How long has that been the case?

A. A little over thirteen years. Have been with them working for a salary ten years.

Q. 5. Since I told you this forenoon, Mr. Warren, that — would want to ask you about the timber cut from these unsurveyed lands, have — been able to get hold of the necessary data to show?

A. No sir, not the unsurveyed lands. I know what we cut in that territory around there, but don't know what come off of unsurveyed and what off of surveyed. We cut off of both; I did not know where the meander line was; I didn't pay any attention and don't know how much come off of surveyed and how much unsurveyed.

Q. 6. Were you up there in charge of the cutting and hauling?

A. No, just go by there occasionally.

Q. 7. They were cutting where you would set them at work, were they?

A. Yes sir.

Q. 8. And you didn't pretend to know where the meander line was then?

A. No sir.

87 Q. 9. You would cut on surveyed and unsurveyed land without regard to where the line might be?

A. Yes sir.

Q. 10. Could you tell where the line was when you were up there —the meander line?

A. Well, I could see Mr. Anthony's line after that was run.

Q. 11. You could see blazes after Mr. Anthony's line was run?

A. Yes sir.

Q. 12. But you did not try to stay on the other side of it?

A. No sir.

Q. 13. You took timber alike from either side?

A. Well, at one time, I believe it was in 1901, we quit cutting over there. I was notified there was an injunction, and we quit.

Q. 14. And then you went back again in the fall of 1904?

A. Yes sir.

Q. 15. Well now, since you don't know about how much was taken from unsurveyed lands in the fall of 1904, have you got any way of knowing now in the light you have since acquired, about how much land you cut over in the unsurveyed lands?

A. No sir, I don't. Where part of these men were cutting I never was out in the woods. We just started them at a point where they would bank, and I don't know how much land they did cut over.

Q. 16. Well, did Chapman & Dewey own all the surveyed land up there?

A. It has been my understanding that they did.

Q. 17. Do you know how much surveyed land they cut over to get the timber that was brought down here?

A. No sir, I don't.

Q. 18. You don't know how much unsurveyed land; I

88 am speaking now of the fall of 1904?

A. No, I don't know how much they cut over.

Q. 19. How much of a force of men did you have up there chopping?

A. We didn't have much force. I think three teams was all we had there in 1904. Will Goodman, Jack Peppers and old man M. L. Rhodes.

Q. 20. Wasn't Potter there?

A. No sir.

Q. 21. I will ask you how much timber you got up there in that fall, all told—you say you can't separate it?

A. I think it figures somewhere in 90,000.

Q. 22. Have you anyway of telling that that is all?

A. That is all we paid for. We had no teams there of our own, or anything of that kind.

Q. 23. In the fall of 1904?

A. No sir, nor since, only this that was cut last spring when Mr. Ritter was there.

Q. 24. You didn't seem to be very certain of your answer; thought about 90,000?

A. Somewhere about that. (Referring to memorandum) April 5, 1904, M. L. Rhodes, 4,578 feet; December 10, 1904, Jack Peppers, 49,861 feet; And on same date, Will Goodman, 39,805 feet. That is all for 1904.

Q. 25. What is the capacity of the mill that cuts that lumber?

A. I don't know. I never fooled around the mill any.

Q. 26. That would be enough to run it about two days, wouldn't it, or one day?

A. I don't know which mill it was cut at. There were three mills running part of the time.

Q. 27. You don't know the capacity of the mill?

89 A. No sir.

Q. 28. Are you able to say that that is all the timber that brought from that neighborhood that fall?

A. Yes; to the best of my knowledge that is all. I done all the paying and settling with the log men, and that is all the books show.

Q. 29. How often do you settle with the men?

A. Whenever a man wants it. When he gets out a bunch of logs and notifies us that he wants a scaler we send a scaler and fix him up and settle with him. It is always turned in to me, and I done the settling.

Q. 30. The timber you were speaking about was all cottonwood, wasn't it?

A. I think some of this was ash, though I am not sure.

Q. 31. Do you know what that timber was worth per thousand?

A. Well, we used to buy it mighty cheap here.

Q. 32. What did you pay for cottonwood at the mill that fall?

A. We were paying $5.00 for cottonwood logs on the river bank.

Q. 33. Was that the market price?

A. That is what other people were paying.

Cross-examination by Mr. HUGHES:

Q. 34. What did you pay for it in the tree, O. K.?

A. Well, we paid for some that year $2.00. Had a contract with Joe McGill for some and we bought some from other people where we figured stumpage $2.00 and then we would cut and haul for $3.00.

Q. 35. Was $2.00 considered a fair market value for stumpage at the time this timber was cut?

A. That is the biggest price that ever has been paid that I know of. Has been getting a little higher all the time. Used to
90 get it for fifty cents.

Q. 36. You are familiar with this unsurveyed land up there, the territory involved in this lawsuit, are you not?

A. Yes sir.

Q. 37. There has been timber cut off of there for years, hasn't there?

A. Yes sir.

Q. 38. By whom?

A. Well they used to cut timber there in '97. Fuller Bros. got timber there before Chapman & Dewey bought the other land. They had Mr. Blanton and Mr. Bowman and Sloan. They all worked in there during the overflow of '97. Marshall & Hotchkiss cut some up there once.

Q. 39. I understood you to say that Chapman & Dewey have gotten no timber off of these sections that are involved in this law suit, which are 14, 15, 22 and 23, except the 94,000 feet, since the fall of 1904, except also the timber involved in the cause of Ritter vs. Shultz, which was disposed of under order of the chancery court, and which is not included in these figures; that is true, isn't it?

A. That is all the cottonwood.

Q. 40. If Chapman & Dewey have received any more timber off of this land, they haven't paid for it?

A. If they got any more I don't know it.

Q. 41. The amount your books show is all Chapman & Dewey have paid for what came from the land in question?

A. Yes sir.

Q. 42. Do I understand you to say that this 94,000 was cut indiscriminately on surveyed as well as unsurveyed lands?

A. Yes sir.

Q. 43. How does this area of the surveyed land on which
91 it was cut compare with the unsurveyed land, as revealed by the marking of these meander lines? What would be the greater surveyed lands cut over, or unsurveyed?

A. I couldn't say.

Q. 44. Don't you know now since you know where the line is?

A. No sir, I don't. I didn't pay any attention to it when I was out there.

Q. 45. Well most of the timber that was cut was timber that was closest to the river, was it not?

A. Yes it would be—I suppose it would be, because those fellows don't haul any further than they have to.

Q. 46. Did you know, or did you not know, that Chapman & Dewey claimed title to the unsurveyed land as well as to the other?
A. I know they did.
Q. 47. And was this cutting done by you believing that they did own it?
A. Yes sir.
Q. 48. Do you know whether or not the advice of attorneys has been taken as to whether or not they own it?
A. Well I know I heard Mr. Dewey say, that is all.
Q. 49. Have you also seen a certain letter from the Secretary of the Interior announcing that the Government made no claim to these lands, and that they belonged to the riparian owners?
A. I saw a letter of that kind once, but it was a good while ago.

Redirect examination by Mr. NORTON:

Q. 50. What caused you to quit getting timber in 1904?
A. It set in to raining and we couldn't hold the teams. It was muddy.
92 Q. 51. How long were they there, the teams?
A. Wasn't there but a short time. I wouldn't think over three weeks.
Q. 52. How many loads would they make a day?
A. I don't know.
Q. 53. Are you somewhat familiar with that unsurveyed country?
A. Yes sir.
Q. 54. There is some timber left up there yet, is there not?
A. Yes sir.
Q. 55. What sort of timber?
A. All kin-s; cottonwood, gum, sycamore, cypress and ash.

And further deponent saith not.

93 *Deposition of M. L. Rhodes.*

M. L. RHODES, being first duly sworn, testifies as follows:

(Mr. NORTON:)

Q. 1. Please state your name?
A. M. L. Rhodes.
Q. 2. Do you live near Marked Tree?
A. Twelve miles northeast.
Q. 3. What is your age?
A. Fifty five.
Q. 4. Do you know what the unsurveyed lands are in township 12 north range 7?
A. Yes, I know of them.
Q. 5. Did you do some timber hauling for *D*hapman & Dewey Lumber Co. in 1904?
A. Yes I hauled some.
Q. 6. How long did you have your team in there?

A. Well I couldn't say positively, it would be guess work; I didn't keep any account of the time.

Q. 7. You have no way of telling how much work you did?

A. No.

Q. 8. Do you know how much they paid you per thousand?

A. Yes, $3.00 per thousand.

Q. 9. Now then do you know how much the total sum of money they paid you?

A. No, I couldn't say. I kept no account. Of course I have an idea about how much I made. I could guess. I couldn't sai I hauled a certain amount; I couldn't say it was just that much and no more. I could say I did haul some and it amounted to a certain number of feet, but I couldn't say that I hauled any certain
94 amount.

Q. 10. Well, could you say about how long you had your team in there?

A. I think I had my team in there about a month and a half. Part of the time, I was hauling on Chapman & Dewey's land, so it proves to be now. I went in there with Mr. Miller and we run down that meandering line and a part of the time I was on the south side and a part of the time on the north side. I think now I was on the north side of that line at least 12 or 15 days.

Q. 11. Well, about how many thousand feet would you haul per day?

A. I usually hauled from two to three thousand feet per day.

Q. 12. How many loads would you make per day?

A. From six to eight loads per day.

Q. 13. You hauled about 400 at a load?

A. On an average, I judge about 400 feet.

Cross-examination by Judge HUGHES:

Q. 14. The hauling that you did was along the latter part of 1903 and the early part of 1904, was it not?

A. No sir, in 1904 altogether.

Q. 15. In 1904 altogether?

A. Yes sir.

Q. 16. Mr. Warren's scale shows that you haul-d 4,500 feet in 1904, and that you hauled something like 65,000 feet in the latter part of 1903.

A. Well, it is a mistake, because I didn't haul there but one season, and if I recollect right I commenced hauling the latter part of September or first part of October and my team come in before Christmas that season, and that is all I ever did haul there at any time.

And further deponent saith not.

95 *Deposition of W. B. Miller.*

Introduced by Defendant.

Mr. W. B. MILLER, being first duly sworn, testifies as follows:

(Mr. HUGHES:)

Q. 1. Mr. Miller, you are President of the St. Francis Levee Board?

A. Yes sir.

Q. 2. And live at Marked Tree?

A. Yes sir.

Q. 3. In front of the building where we are taking these depositions, the Bank of Marked Tree, stand two cottonwood trees; have you measured these trees?

A. Yes sir. I measured them about ten minutes ago.

Q. 4. How far from the ground did you make your measurements?

A. Not three feet.

Q. 5. And what was the result?

A. One measured eight feet and eight inches in circumference, and the other measured seven feet and eight inches.

Q. 6. How old are those trees?

A. Well, I recollect those trees—I came here in the winter of '86, and my first recollection of those trees they were little saplings about the size of my arm a year or two afterwards; I couldn't say exactly what year. Those trees are less than twenty years old. Somewhere between 17 and 20; they grew in that barrow pit since that railroad was built. It was built in '82, wasn't it?

Cross-examination by Mr. NORTON:

Q. 7. A barrow pit is calculated to hold water and moisture, isn't it?

96 A. Yes sir.

Q. 8. Is that a good place for cottonwood to grow—where there is moisture?

A. I believe so; they grow very quickly around wet places.

Q. 9. I will ask you if those cottonwoods are surrounded by any other timber?

A. No sir, no other timber around them.

Q. 10. How far from them to any other tree of any sort?

A. I believe there is one gum stands out there, but it is about dead. Yes, there is an old gum stands fifty or sixty feet of it; that is the only tree within three or four hundred feet.

Q. 11. So then there has been no other growing timber close to those cottonwoods to take the strength out of the soil or shade them in any way?

A. No sir.

Q. 12. Are they also in rich soil, as well as in the moist barrow pit?

A. Yes, and that barrow pit hardly ever went dry until the R. R. Company filled it up.

Q. 13. Are the trees still in rather a low place?

A. Yes sir. The barrow pit has only been partially filled. Hasn't been filled to the level of the other ground.

Q. 14. The water doesn't stand there?

A. No sir. It is also true of these cottonwoods that they have been topped two or three times.

Q. 15. You are President of the plaintiff in this suit?

A. Yes sir.

Q. 16. Have you at any time lately been over the lands on which the timber in this case is said to have been taken, commonly called the unsurveyed lands in township 12 range 7?

97 A. Yes sir.

Q. 17. What was the occasion of your trip into this unsurveyed land in November, 1907, and who was with you?

A. I went over this land about the 5th or 6th of November, 1907, with a surveyor, for the purpose of definitely locating that particular part of the unsurveyed land from which this timber was cut for which we are bringing this suit. There was with me the surveyor, Mr. Sam Sage; a civil engineer, Mr. J. E. Winston, of the St. Francis Levee Board, Mr. H. F. Roleson, Attorney for the St. Francis Levee Board, and Mr. Calhoun.

Q. 18. What was the purpose of the expedition?

A. To definitely locate this particular tract of unsurveyed land from which this timber was cut that we are suing for.

Q. 19. Anything about levels in it?

A. Yes, to take the elevation.

Q. 20. That was done, was it?

A. Yes, the elevation was taken.

Q. 21. I want to ask you, Mr. Miller, about the general character of timber on that unsurveyed land?

A. Do you want that by comparison?

Q. 22. Well you can give it to me in both ways.

A. I found on the unsurveyed land a great deal of mighty fine timber; cottonwood, ash, cypress, maple, sweet gum and some oak, hackberry—in fact all kinds of timber that grows on the surveyed land.

Q. 23. Well, does it differ in size or quality in any way from that on surveyed land?

A. No; there are parts of the unsurveyed land where the timber is not so thick or not so large; then there are parts of the unsurveyed lands where the timber stands fully as thick and fully as large

98 as the timber on the surveyed land, and there are a few openings on which there is no timber.

Q. 24. What is on those openings, if anything?

A. Well, an old cypress here and there, small growth covered with *falg* and weeds.

Q. 25. Are there any scraggy old cypress around in there—hollow butts of cypress?

A. I found a few—one in particular that I have a photograph of, one old cypress that was lying down on the ground, that I stepped from the root up 21 feet, and it measured three feet in diameter 21 feet from the root.

Q. 26. Had it been cut down?

A. No, apparently fallen down.

Q. 27. In this flag that you speak about, was there any water?

A. No sir.

Q. 28. To what extent was there water any where in there on this unsurveyed land?

A. On the 6th of November our surveying party run the section lines between sections 12 and 13, 11 and 14, commencing at the east meander line and running west. At noon we sent two of our party out to find water to have with our dinner; they went north and west and hunted for about an hour and came back and reported that no water could be found. We afterwards found a little water in some cow tracks and we drank that, and that was all the water we found until we struck the right hand chute going west.

Q. 29. How deep does it get in there since the levee has kept the Mississippi out? I want to know how deep it gets at times?

A. I could only judge by the water marks on the trees; they showed anywhere from three to four feet.

99 Q. 30. The marks of recent waters, you mean?

A. Yes.

Q. 31. Do people ride up there in gasoline boats sometimes?

A. Not through any of this territory I have been telling you about going over; there is water enough in there for a gasoline boat, but you can't well get in there for the trees and brush.

Q. 32. So then all that unsurveyed country gets under water three or four feet?

A. Yes, well, practically all of it, there are ridges in there apparently the same height according to our levels run by the engineers, but there is plenty of surveyed land you can run boats over—gets over the sunk land too.

Q. 33. About the same way?

A. Yes.

Q. 34. I am speaking now about how it is since the levee has kept the Mississippi out.

A. Yes, from local waters.

Q. 35. Now, Mr. Miller, I want you to identify the pictures you took on that trip. Mr. Winston has testified that photographs were taken. (Handing Mr. Miller a bunch of pictures.) I have them here and make them exhibits to this deposition, and have numbered them on the back in ink. State what number 1 is, and where it was taken?

A. No. 1 is the photograph of the fractional corner of Section 12 and 13 on the meander line, looking east on the surveyed lands.

Q. 36. Number 2 is what?

A. Number 2 is a photograph of the southwest corner of the northwest quarter of Section 15, 12, 7, looking northeast on the unsurveyed lands.

No. 3 is the fractional corner on the meander line between section- 12 and 13, looking west.

100 No. 4 is corner of Sections 13, 14, 23 and 24, 12-7, looking northwest on unsurveyed land.

No. 5, Southeast corner Sec. 11, 12-7, looking northwest.

No. 6, is southeast corner Sec. 10, 12-7, looking east.

N. 7, is fractional corner on meander lines between sections 14 and 15, 12-7, looking south on surveyed lands.

No. 8, is fractional corner on meander line between 14 and 15, 12-7, on surveyed lands.

No. 9, is fractional corner between sections 14 and 23 on meander line looking northeast.

No. 10, is the fractional corner between sections 15 and 16, 12-7, on the meander line looking southeast.

No. 11, shows an old cypress log found in the heart of the sunk land on the line between sections 11 and 14.

No. 12, is the southwest quarter of Section 12, 12-7, looking north in the heart of the sunk lands.

No. 13, is the fractional corner between sections 15 and 22, 12-7, on the meander line, looking north on the sunk lands.

No. 14, is the fractional corner between sections 14 and 23, on the meander line looking northeast.

No. 15, is the southwest corner of north half northeast quarter Section 15, 12-7, looking east.

No. 16, is the center of northeast part of Sec. 15, 12-7, looking northeast.

No. 17, is a flag opening on the south line of Section 12, 12-7, looking north on the sunk lands.

Q. 37. Have you talked with Mr. O. K. Warren, Mr. Miller, in the last year or two, about the timber taken from these unsurveyed lands in 12-7?

101 A. Well I had a talk with Mr. Warren directly after I took charge as President of the St. Francis Levee Board; that was sometime in 1905, in regard to the timber Chapman & Dewey was cutting off these lands.

Q. 38. What did he say about it?

A. He said they were cutting timber off the unsurveyed land; that it was their land and they were cutting timber off of it. I don't think I have had any definite talk with Mr. Warren within the last year.

Q. 39. Did he tell you he could give you the amount of timber they got any time you wanted it?

A. No, not the exact amount. He gave me to understand that they claimed this land and of course they kept no record of the amounts cut off the surveyed and unsurveyed land.

Q. 40. Did he ever say anything to you about the quantity they were getting?

A. No.

(Mr. HUGHES:)

Q. 41. While you and your party were searching for water on

this unsurveyed land, you were there at a very dry season were you not?

A. Yes sir, but not an unusually dry season for the St. Francis Basin. I have known in my life here several years much dryer than this past year.

Q. 42. Well you say the water gets three or four feet deep on this land?

A. Yes sir.

Q. 43. You would find plenty of water if you go there at that season of the year?

A. Why certainly.

102 Q. 44. As a matter of fact, you went there in the dry season while no water was there, and you went at that time for that reason?

A. Yes sir, couldn't have gone in there at any other season to have surveyed it. I would testify just as quickly that all of the unsurveyed land that I am familiar with has been covered with water a part of each year.

Q. 45. As much as six months on an average?

A. I expect an average of six months; and it would be dry about the same length of time; that is, under normal conditions; of course the last two years we have had abnormal conditions. For instance, many times I have crossed Little River on our regular big road to this particular land that we are discussing, when Little River was absolutely dry; when I crossed Little River last year in November it was belly deep to a horse, so this was not an exceptionally dry year if we judge anything by the way the water flows down these streams.

Q. Well now, before construction of the St. Francis Levee what amount of water was found at different seasons of the year on this territory?

A. The construction of the levee has not cut any figure in the depth of water on these lands only as it kept the Mississippi water out of there, as far as I can see.

Q. 47. The Mississippi water would overflow this land to a very great depth, would it not?

A. Yes sir, both surveyed and unsurveyed.

Q. 48. On this particular land in controversy, how deep would the water be in overflow times?

A. Well you know the depth of overflows from the Mississippi varies of course according to the height of the Mississippi River. For instance, without any levee, 44 feet at Cairo covered all

103 of our lowest land in Poinsett County with Mississippi River water and the stage at Cairo frequently went up to 50 and 52 feet. The depth of water on these lands would of course be regulated by the height of the Mississippi River.

Q. 49. It did overflow, as a matter of fact, to the depth of eight or ten feet, did it not?

A. Oh yes, from the Mississippi, I should say eight or ten feet.

Q. 50. In following that meander line from the right hand chute, at a point where it leaves the right hand chute at the south western

corner of this unsurveyed land, or near there, in following it around there is no difference in the elevation of the land?

A. On the west side?

Q. 51. Not on the west side of the chute—explain it on this map—in following the meander line around from the right hand chute near the southwest corner of Section 15, is there no difference in the elevation of the surveyed and unsurveyed lands?

A. Oh yes, yes sir, lots of difference. In one place you would find the surveyed land the highest and the unsurveyed land the lowest, and you would perhaps come 200 feet further and you would find the surveyed the lowest and the unsurveyed highest.

Q. 52. As a matter of fact, doesn't the present condition of the soil along that line, along the southwest corner of Section 15 and around through section 22 indicate that the unsurveyed land was at one time the bed of a lake?

A. It doesn't to me any more that the surveyed land. Neither of them has any appearance, to my mind, of a lake.

Q. 53. I am not speaking of a lake at the present time, but of an old lake?

A. There is no appearance on either of any lake ever having been there. Following that meander line around, Judge, taking two or three hundred feet on either side of it, the timber was
104 practically the same. These little variations in elevation would vary from one side to the other; taking it as a whole proposition all around that meander line, some places, as far as I could see, the land would have every appearance of being the same on both sides of the line. The best answer I can give as to appearance of the land near the meander line all along the east, commencing as you suggest, at the right hand chute, following south around up the east side of the unsurveyed land, in 12-7, the land appears to be practically the same on one side as the other.

Q. 54. There are ridges, however, running from the surveyed into the unsurveyed land, is it not true?

A. I found in going from east to west partially through the center of that body of unsurveyed land in 12-7, that there were little openings, two or three, that run southwesterly course, and there would be a little opening here perhaps 100 feet wide, other places 200 feet wide, grown up in brush and small cypress, then we come to well defined ridges with large cottonwood, gum, elm and ash.

Q. 55. Those ridges, were they wide or narrow?

A. They would run—I remember one particular ridge there that was at least ½ mile wide, and it run in a southwesterly course just as these little openings did.

Q. 56. Where is that ridge?

A. My recollection is that the large one that I crossed was in —well, I expect pretty close to the line of Sections 11 and 14, maybe part in 11 and part in 14.

Q. 57. Isn't it true, Mr. Miller, that the best of this timber grows on the ridges?

A. The best timber grows on the highest land.

Q. 58. Isn't it also true that the best of the timber on the
105 unsurveyed land grows near the meander line, generally speaking?

A. Not in this case.

Q. 59. You think not?

A. This photograph shows that plainly; some of as pretty timber in the heart of the unsurveyed as there is anywhere.

Q. 60. This was on the ridges, however?

A. Yes; there are some of those openings that are practically barren of timber, as shown in picture Number 17.

Q. 61. Cottonwood timber is found upon the do-nicks and ridges and higher places on this land, is it not?

A. Well, I found a good many very large cottonwood trees in some of the lowest places on that land.

(Mr. NORTON:)

Q. 62. In your cross examination you said that since the levee has kept the Mississippi out, the water still will get from three to four feet deep over the unsurveyed land and stay that way maybe five or six months in the year. I want to know to what extent, if at all, this is equally true of the adjacent surveyed lands?

A. It is a fact that a heap of the surveyed land that adjoins is as low as the unsurveyed, consequently, it is covered to a like depth.

Q. 63. Then when the unsurveyed land is under from three to four feet, it will also be true that the surveyed land will be under water to exactly the same extent, will it not?

A. Yes, any of the surveyed land of the same elevation of course would be under; in the same stage of water that would put the low part of the unsurveyed land under water, would put a large area of the surveyed land as well.

106 Q. 64. If when the water is three or four feet deep you can ride over this land in a canoe, would it also be true that you could go anywhere you pleased over the surveyed land?

A. No, no, you see some of the surveyed land that three or four feet of water would cover all of it and at the same time would leave a whole lot of the unsurveyed land without any water on it. Three or four feet of water wouldn't cover all of the unsurveyed land, but any stage of water that would cover all of the unsurveyed land would cover all of the surveyed land adjacent to it, in 12-7, all south in that township; it wouldn't all east in that township because west ridge is in there extra high, but a stage of water that would cover all the unsurveyed land in Township 12-7, would cover all of the surveyed land south in that township.

107 *Deposition of G. W. Calhoun.*

STATE OF ARKANSAS,
County of St. Francis:

G. W. Calhoun, on his oath says, my name is G. W. Calhoun. I reside in Memphis, Tennessee. I am a civil engineer by profession, and am twenty-one years of age. I commenced to work as a

helper on surveys when I was about twelve years of age, and have been doing independent work for the last seven years.

I have been engaged in making surveys and estimates of timber lands, surveying, and map-ing plantations, city engineering, and engineering of all kind. I have also done a great deal of city work around Memphis, Tenn., and have done some work for the St. Francis Levee Board.

I studied my profession under my father, who was a civil engineer. Some of the work I have done for the St. Francis Levee Board was in connection of what was known as the Sunk Lands or Unsurveyed Lands in the northeastern part of Arkansas, and within the last ten days, I was employed by the President of the St. Francis Levee Board to go in Twp. 12-7, and Twps. 13-7, Twps. 13-8, and also Twp. 12-8.

I understand the President of the Levee Board sent me in there to get some evidence to use before the Department of the Interior in connection with a matter pending there relative to the land in Ranges 6 & 7, and from Twp. 11 North, to the Missouri State line. At any rate, a few townships nort- of 11, but especially required me to go in Twp. 12-7, 13-7 & 13-8. I got a gasolene boat at Marked Tree, Ark., which is near the mouth of Little River, and went up Little River through Twp. 11-7, and to what is known as Dillard's Cutt Off in 12-7. In the S. W. corner of 22 I ran into Dillard's Cut Off, which runs in a northwesterly direction, and in about one half mile came to the right hand chute of Little River, near the
108 center of Sec. 21, and then went up the right hand chute of Little River in a northerly direction to a point near the N. W. corner of Sec. 1, in 12-7.

Little River was out of its banks, except where they were quite high, and the right hand chute of Little River was out of its banks nearly every where. I made this trip on the 21st day of May, 1908. There is considerable body of unsurveyed lands about the center of Twp. 12-7, according to the Government plat, and the Government Survey, and my purpose was to get the relative depth of water on unsurveyed portions of Twp. 12-7, and the surveyed portion of said and adjoining townships.

I spent a day in taking the depth of the water in sundry places in Twp. 12-7, and in the S. E. portion of 13-7, and the S. W. portion of 13-8. I also took the depth of the water in some places in the N. W. corner of 12-8. These lands were all laid off in sections by Government Surveyors except a portion of 12-7, meandered out by the Government. It is the same water, however, extending over the sectionized portions of other townships than 12-7. In the S. E. portion of 13-7, I found three feet of water in some places and two feet in other places, saying nothing of fractions; in Sec. 31-13-8, I found water two feet in places and three feet in other places below in Sec. 6-12-8, it was in several places four feet deep.

I took several measurements on the line between Sec. 1-12-7, and Sec. 6-12-8, which varied in depth from two to four feet. The entire country in that vicinity was under water and apparently about the depth it had at the places I measured it—a depth of from two to four feet.

I did not go to the limit of this flat section of the country but judging from what I saw in that vicinity and from what I know of the country seven or eight miles north of there, I think this low land extends several miles in a northerly direction. It could
109 have a width in places if probably as much as ten miles. The water of the right hand chute extends for miles on both sides of the chute in 12-7 and the townships adjoining it on the north, at this date.

During the past fall while the country was dry, I surveyed in 12-7, following the Government Field Notes of the meander line around the portion meandered out. That meander line is now under water at all places where I saw it on this last trip, and from the general appearances, it is under water nearly everywhere.

The right hand chute of Little River in the S. E. corner of 12-6 connects with the water of the St. Francis Sunk Lands. While on this trip, I did not see anything in 12-6, the water in the two townships connect and the general condition of the country make it safe to say that in what are called the St. Francis Sunk Lands, the water must be practically what I found it in these townships. According to the plats of the Government survey of 13-8 the Sunk Lands were sectionized in October and November, which is the same season of the year in which I worked last fall—Nov. 1907—in the portion meandered out in 12-7.

The portion of 12-7 meandered out in Nov. 1907, was dry to that extent that we were very much troubled to find water to drink.

I was in there last fall longer than I have indicated so far. I went in there in October and it was then very dry, and that was the time we had trouble in getting water to drink. I don't mean good water, but I mean any kind of water. I was in there through November and up until December, and at that time the water was up and I had to quit work.

——— ———.

Subscribed and sworn to before me, this the — day of May, 1908.

——— ———.

110 *Stipulation.*

It is agreed that the above may be read by either part, as the deposition of G. W. Calhoun, in the following cases pending in the Poinsett Chancery Court: #587, E. Ritter vs. Henry Schultz, et al.; #649, Board of Directors v. Chapman & D. L. Co.; #648, The National Handle Co. v. Chapman & D. L. Co.

It is also agreed, in said causes, that the owners of the adjacent sectionized lands, have never assessed for taxation, or paid taxes on any of the lands claimed by either of the plaintiffs in said causes; and that plaintiffs have paid all taxes since conveyance to them by the Levee Board.

Of Counsel, N. W. NORTON,
For Plaintiffs.
ALLEN HUGHES,
For D'fts.

111 In the Chancery Court of Poinsett County, Arkansas.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE BOARD,
vs.
CHAPMAN & DEWEY LUMBER COMPANY et al.

The Depositions of C. A. Wallace, G. W. Calhoun, G. B. Baskerville, Jr., W. B. Miller, Jas. Anthony, and E. Ritter, taken at the office of the St. Francis Levee Board, in the Randolph Building, in the city of Memphis, Tenn., on Wednesday, February 5th, 1908, between the hours of 1:30 p. m. and 4 o'clock p. m.

Present: Judge N. W. Norton, for the Plaintiff; Judge Allen Hughes, for the Defendant.

All formalities waived, except as to irrelevancy, immateriality, and incompetency.

112 *Deposition of C. A. Wallace.*

Mr. C. A. WALLACE, being first duly sworn, deposes and says:

(Direct examination by Judge NORTON:)

Q What are your initials, Mr. Wallace?
A. C. A.
Q. What is your business, and where do you live?
A. My business is kind of mixed up. I have been raised on the farm, and have been in the real estate business, estimating, assisting in surveying and engineering, etc.
Q. Where do you reside?
A. Monette, Craighead County, Arkansas.
Q. How long have you lived in that part of Arkansas?
A. About twenty some odd years. I moved there in 1883, and was away some the next year, and then went back.
Q. You have assisted some, you say, in surveying?
A. Yes, sir, quite a lot.
Q. Did you ever assist, and if you did say when it was, in surveying or attempting to survey something in township 13 North Range 8 East?
A. Yes, sir; I went in there for Mr. Ritter.
Q. How long ago?
A. It was last October—September and October.
Q. September and October, 1907?
A. Yes, sir; it was last year.
Q. In the fall?
A. Yes, sir.
Q. Is that township crossed by the right hand chute of Little River?
A. Yes, sir; part of it.
113 Q. In your survey which part of the chute was you on?
A. East.

Q. On the east side?
A. Yes, sir.
Q. I want to ask you whether or not you encountered any flag openings up there?
A. Yes, sir.
Q. In what part of the township?
A. In the west part.
Q. In the west part?
A. Yes, sir.
Q. Could you tell from the map about what section the openings were found in?
A. Yes, sir; I could tell about it.
Q. I will show you this Government map and let you say, as near as you can, what sections that flag is in?
A. (Examination plat) Well there is some in 20; some in 19; there is also some in 18; there is some in 29; some in 20; also some in 31.
Q. Well, is that one opening?
A. No, sir; it is divided up in different openings; with little skirts of timber surrounding it and about through it, and then there is little leads running from one to another, and divided up in different parts. That on 29 and 30 I believe is about the—and also 19 and 18, have pretty good openings—the upper part of 19 and the lower part of 18 and the west half of 29 and the east half of 30 has quite an ope-ing on it, and then the others all have some openings on them—smaller surrounded by timber and skirts of timber through it.
Q. How small would you say the smallest is?
A. Well, some of them get pretty small—little batches, and then they get larger, little batches surrounded by timber, maybe
114 some of them not more than a half acre, and others four and five acres, and ten acres, or something like that, and from that on up, some of them pretty good size in 18 and 19; also there is some in 20; some of them have two or three hundred acres in it; running all the way from real small up to two or three hundred acres.
Q. Well, now, what would be the usual skirt of timber that separates it—about how wide?
A. Oh, *id*fferent sizes; sometimes quite a lot, and other times small amounts—nothing regular about it.
Q. Well, what would you say is flag in the places you mention—how much flag in the whole?
A. I suppose something between one and two thousand acres; something along there; I never did look at it very carefully, but that would be my opinion.
Q. From one to two thousand acres?
A. Yes, sir.
Q. In these sections you have named?
A. Yes, sir.
Q. Was the water in there when you were there?
A. Yes, sir.

Q. About how deep?

A. Well, different depths. I suppose something like three feet; that was about the deepest I think. Of course in the river it was deeper than that; it would run from the water's edge and it would keep getting deeper and deeper; I believe the deepest was something like three feet.

Q. Who were with you?

A. I have forgotten the gentleman's name. I would know it if I heard it called. Let's see——

Q. Was it Baskerville?

A. That's the name.

115 Q. He was the surveyor, was he?

A. Yes, sir.

Q. Do you know whether he finished the survey or not?

A. No, sir.

Q. Do you know why?

A. Well, the water was too deep.

Q. Too much water?

A. Yes, sir.

Q. Well, was that water in the timber, or was it confined to the flag?

A. It was in the timber and flag both.

Q. Timber and flag both?

A. Yes, sir.

Q. Mr. Wallace, do you know whether that township is laid off into sections or not?

A. I think it is; I have worked in it quite a lot and helped survey right smart through there, but to be positive I wouldn't say—I think it is.

Q. Well, where you were surveying on that occasion, were there section lines?

A. Yes, sir.

Q. And, were you surveying on these sections that you have testified about?

A. Well, some parts of them, yes. I didn't go around all of them, no. Let me see, there was 19 and 18 and 31. I don't think we ever reached them at all.

Q. Well, there is flag down there to your knowledge?

A. Oh, yes.

Q. Do you know any other body of land in that bottom that is surveyed land and at the same time has flag on it?

116 A. Yes, sir.

Q. Where is some of it?

A. The next township north of that—14—not quite so much, perhaps, but the same character—not quite so much of the flag opening.

Q. Not quite so much?

A. No, sir.

Q. Well, are you familiar more or lesser to any extent with 12-7—Township 12 North Range 7 East?

A. Well yes; I am tolerably familiar with that. I have been over it but am not so familiar with the lines. I am familiar with the adjoining lines right across in Mississippi County, but I am not really familiar with the lines in that corner of Poinsett—that would be in 12-7.

Q. Do you know any certain condition of the face of the earth in these localities called "Sand Blows"?

A. Yes, I am more or less familiar with them.

Q. Do they exist in 13-8?

A. Yes, sir; all over the country that I have been on.

Q. In 12-7?

A. Yes, sir; all over the sunk lands that I have been over I have found them; both the high land and the low land.

Q. That is a well understood name for them, is it?

A. Yes, sir they call them sand blows.

Q. About what is the usual size?

A. Oh, different sizes; some times they will cover 15 or 20', and sometimes a quarter of an acre. That has been my experience with them.

Q. Now, in what way do they differ from the surrounding land?

A. Well, they generally set on top of good rich soil, and
117 generally a little higher, and by digging through them you can strike good soil. There seems to be just a cap of sand on it; some of them about a foot or eighteen inches deep. On the lower places they are deeper, but I have never found one yet but that by digging down you could get good soil. Every evidence points to the fact that the land sunk and places broke in the earth and this land and water came up through these broken places.

Q. Are there *are* broken places in the earth in that locality?

A. There are some places where the land didn't sink. Around them you can see the crack very plainly, but the other earth that did sink broke all over it. Some few places I know that didn't sink looks that way; seems as though there was something under it that came up and you can see where it broke off, and see the old cracks there yet.

Q. Now, these sand blows, I want to know to what extent they are pure sand, or are they mixed with soil?

A. Sometimes they are pure sand, and in some places the sand washes and drifts and makes sand bars, but the sand blow, it has something in it as a general thing, something like coal, but I can't understand whether it is coal or what it is, but you take it and break it open and it looks a good deal like coal.

Q. It is in these sand blows, is it?

A. Yes, sir; I found it in them more than anywhere else at all.

Q. Do these sand blows have vegetation?

A. No, sir; the sand, you know, gets so hot when the sun shines that it kills the vegetation. Nothing won't grow on them unless there is something to shade the ground; a tree, or something like that.

Q. Do you know enough about 12-7 to say anything of the relative heighth of that township compared with 13-8?

A. Well, yes.

118 Q. Well, what could you say about it?

A. It is pretty much the same thing—pretty much the same—I don't see really any difference to speak of. I have been all over all of it time and time again.

Q. Do you know a flag opening on 12-7?

A. Yes, sir.

Q. What part of 12-7?

A. It is in the east part.

Q. The east part?

A. Yes, sir.

Q. About how far is it, Mr. Wallace, from the flag opening in 13-8?

A. Well, it extended all down; it crosses the chute at a place called Bar Camp Overflow; it leaves the right hand chute somewhere near the township line between 7 and 8.

Q. You mean Range 7 and 8?

A. Yes, sir; the township line runs east and west and the Range line North and South, and it leaves just east of the corner, the northeast corner of Poinsett County.

Q. What township is that?

A. That line along there is between 7 and 8; the township would be 13 and 12.

Q. Does any of that flag extend from 13-8 into 12-8?

A. Well, I rather think it does. Yes, I think it does, but I am not really familiar with the lines in there. I think you will find some territory in there that has never been surveyed; if it has I couldn't find any evidence of it.

Q. Do you mean that you have looked for lines and have not been able to find them?

119 A. Yes, sir; there are very few lines run in there.

Q. Do you mean township and range lines?

A. No, section lines.

Cross-examination.

By Judge HUGHES:

Q. You are not a surveyor?

A. No, sir; I assist in surveying.

Q. What sort of assistance do you render?

A. I can do anything from handling the compass on through; but I don't put myself up for a surveyor at all; I am not a surveyor.

Q. You say you came to that country in '83?

A. '83; in September, yes, sir. I went away the next year and stayed a year and then came back and have been there ever since.

Q. You went away the next year?

A. Went to Howell County, Mo., yes, sir.

The witness stated here, of his own accord, that there was some flag down the line there, and some mighty fine timber.

Q. There has been a good deal of water over that country within that time, hasn't there?

A. Oh, yes.

Q. About how much did you ever know to be over there?

A. That is a sort of hard question to answer.

Q. Well, how deep?

A. Well, it is owing to the season of the year; I have seen it seven or eight feet deep in overflows, but the common spring stage it goes all the way from 6″ to 3′.

Q. And in time of overflow 7′ or 8′.

A. Yes, sir; that was before the levee was built. I expect it gets six feet deep yet in lots of places in the Spring stage, especially
120 since they cut them channels up there in Missouri; that throws more water down there on that country than it did before they were cut. In the last two years it has been eighteen to twenty-four inches higher than I ever saw it before.

Q. That is surface water?

A. Yes, sir.

Q. Clear or muddy?

A. Well, generally it will be clear, but in heavy rains it gets muddy; the chute water gets muddy in Little River when there has been rains up above, but generally back up where it isn't so close to the channels it is clear, but it gets muddy in hard rains, but it is generally clear.

Q. Well, you have seen a good many overflows come and go away, haven't you, Clarence?

A. Not very many. I have seen a few, though. I was there in '84 and have seen all of them since.

Q. Well, when these overflows would move across the face of the country would they move the surface of the earth along or wash the sand about, leaving sand bars, and so on?

A. Oh, yes, sir. Sometimes they would take a drift of sand up and make a sand bar; they would cut big holes in the ground and drift the dirt somewhere else.

Q. Your theory about the sand blows is that the same came out of the earth when this country sunk?

A. Yes, sir. I have pretty good evidence of that.

Q. What do you think about the theory that they are drifts of sand left by the overflows?

A. Well, I know they are. I have seen the overflows take these same sand blows and put it somewhere else. I have seen these streams move the sand bars from one place to another. One place up
121 there I know where there was about 12 feet of water; now it it about a 12 foot sand bar in place of the water in the Right Hand Chute.

Q. This coal looking stuff you are talking about—Do you know whether it is a vegetable or a mineral?

A. Well, I don't know. I really believe it is no more than wood that was sunk and kind of petrified to a certain extent when this country sunk. You take it and look at it and examine it and it is

a pretty good imitation of stone coal; it has a grain; I have seen it have places on it that imitated a knot.

Q. A knot?

A. Yes, sir; I have seen it that way; it might be—but I really don't know what it is, and I never found a man that did know for sure.

Q. Is it very heavy?

A. No, sir; it is light. Some of it is a fraction heavier than wood, but as a general thing it isn't any heavier than wood.

Q. Did you ever find any of it in these sand drifts after the overflows?

A. Yes, sir; I have found them where the water has washed off in places. You will generally find it though in them sand blows; places that I call blow-ups. I never found it mixed with the solid dirt; it is always in some of them places where it looks like it has been a settlement or washed out of something of that nature.

Q. Well, in the beds of these streams after the water goes down you find drifts on which you find rocks lying on top of them, don't you?

A. Well, I find this stuff I speak of sometimes. I don't know that it would be on top.

Q. Is there any rock in that country?

A. No, sir, some kind of small rock——

122 Q. Have you ever lived in a country that was a rock country?

A. Oh, yes.

Q. You have seen rocks left on top of sand drifts after the water has passed you, haven't you?

A. Rocks and gravel, yes. I don't know whether I seen them on top of drifts.

Q. Well, I mean this. When a stream moves a lot of sand or dirt and builds up a sand drift or any other kind of a drift or bar, it is not anything to find rock on top of it, is it?

A. No, sir; not where it has built up a drift—small ones, or——

Q. Well, gravel, and things of that sort?

A. No, sir.

Q. You say you are not familiar with the lines in 12-7?

A. No, sir; there are not many in there.

Q. Well, these modern surveyors have made some. Have you seen them?

A. I have seen a part of them anyhow; that is up to the last year or so. I have not been in there looking for lines for the last two or three years. I reckon I know all of the lines run up to the last three years.

Q. Did you help Mr. Anthony make his survey?

A. No, I checked up after him; went in to see if I could find any of them.

Q. When did you do that?

A. Five years ago.

Q. What did you check it for?

A. Locating the lines and getting the lay of the land generally.

Q. That was a part of your real estate business?

A. Yes, sir.

123 Q. Locating good tracts of land and selling them to some fellow you could make a deal with?

A. Yes, sir.

Q. Have you seen the lines Sam Sage run in there?

A. I don't know. I think there was another man in there. Some people saw him, and then I went across and chased his lines up and located them. I don't know really who did the surveying but it seems to me that it was something like Anthony or something like that. I never did see him surveying there at all; I just went in afterwards and chased the lines around and I reckon I found about all that run in there. I estimated it and run the lines just to see what was there.

Q. You have dealt some in timber, haven't you Clarence?

A. Right smart.

Q. Do you know anything about the growth of timber; the rapidity of its growth; how fast it grows?

A. How fast it grows, you mean?

Q. Yes, take cottonwood, for instance?

A. Well, not a great deal. I have had some experience too. I have watched a few trees. I know some cottonwoods that are about 24 years old and they are better than 24 inches in diameter; about where you cut them off at the stump, they are better than that.

Q. How much better?

A. Well, say 26 or 27 inches; some a little larger than others they would run from 24 inches and up in 24 years. I remember we trimmed them up with our pocket knives and left them in the fence corners to protect the fence from overflow. Now they are 23 and 24 inches; that has been 23 years ago and they *won't* more than one year old then. I watched them. As to other timber I never noticed it to see how fast it grows. It don't grow so fast as the cotton-

124 wood, though; that has been my experience.

Redirect examination.

By Judge NORTON:

Q. These cottonwoods you speak of having grown so rapidly, they are not in the woods?

A. No, sir. I don't think they grow quite so fast in the woods, unless they are out in a good open place.

Q. Do these sand blows you speak of, do they occur sometimes in fields?

A. Oh, yes, very often; they are all over all this country, these sunk lands; there you will find them; some places more than others.

Q. What do they raise on them in the field?

A. Well, they don't generally raise anything; they won't grow anything; the sun is too hot on the sand unless it is something like peas, watermelons, or sweet-potatoes; something like that that will shade the ground.

Q. Well, if there was a sand blow in a corn field there wouldn't be any corn on that place?

A. As a general thing they don't grow well.

Q. Isn't it true that in a corn field they would plant something on it that would shade the ground?

A. Yes, sir; they would plant something on it; it won't produce corn.

Q. Is it a generally accepted theory about these sand blows that they came up out of the ground when the ground sunk?

A. A great many people believe it. I have had quite a number to agree with me on it, while some claim that it was caused from the wash, but they had to have something to wash from.

125 Q. Well, now when there is one of these sand blows in the field it is there year after year, isn't it?

A. Yes, it stays there unless it is plowed under. Some of them are so that you can plow them under.

Recross examination.

By Judge HUGHES:

Q. These trees you speak of, Clarence, in the corners of the fence. Was there timber adjacent to them. Was your field next to the woods?

A. No, sir; there was an opening on both sides.

Q. An opening on both sides?

A. Yes, sir; but it grows very near that fast where it ain't too thick and heavy in the woods; where they are smothered up with other timber and stuff you know they won't grow so well, but you take a tract of land where it ain't too thick and where they ain't too much jammed up with other timber and a cottonwood will grow rapidly.

Q. Cottonwood grows more rapidly in lowlands than in high?

A. Well, it don't want to be too low; it wan. medium low. I don't think it would do so well in the hills.

——— ———.

Sworn to before me this 5th day of February, 1908.

———,
Notary Public.

My Commission expires ——— —, 190–.

126 *Deposition of G. W. Calhoun.*

Mr. G. W. CALHOUN, being first duly sworn, deposes and says:

Direct examination.

By Judge NORTON:

Q. Mr. Calhoun, you testified in this case some days ago?

A. Yes, sir.

Q. I want to show you a map that was made an exhibit to the

deposition of Mr. Collins since you testified, on which he shows two areas of flag. Did you hear him testify?

A. Yes, sir.

Q. I will ask you to what extent you have been over that area which on the map represents an opening of flag extending northeasterly and southwesterly through the southeast corner of 11, the west half of 12 and the northwest corner of 14?

A. Well, I run a line through it east and west near the center, and I think I walked around through this way from along——

Q. In what direction?

A. From northeast to southwest.

Q. Now, you can say how much and what sort of flag you found in that locality?

A. Well, I found scattered flag all through it.

Q. Scattered flag?

A. Yes, sir; I didn't see any opening at all; that is, any large opening; there was timber scattered all through the flag.

Q. What kind of timber?

A. Cypress and cottonwood, principally.

Q. How much would you say was the largest opening you found in there?

A. The largest opening I saw, without any timber at all, wouldn't be more than five acres.

Q. You may say to what extent, if any, you found ridges
127 in that locality?

A. Yes, sir. There are ridges running in a northeasterly—running northeast and southwest—all the way across there.

Q. Well, just say, by sections, where they would be?

A. They would run from Section 11 into 14; and from Section 12 to 13.

Q. Is there timber on these ridges?

A. Yes, sir.

Q. What kind?

A. Mostly cottonwood and cypress; a few scattering ash in places—a good many ash trees; also a few small spots of small cane and gum timber.

Q. Within what is called the unsurveyed lands in that body is there any place where there is flag not shown on this map of Mr. Collins?

A. Yes, sir; there is scattered flag more or less all over the land that is not shown on this map.

Q. Well in what sections (You might look on your map if this map doesn't show where it is)?

A. He doesn't show it. Let's see; it is sections 19, 20, 29 and 30.

Q. Is there flag down there in that opening?

A. Yes, sir.

Q. Is there timber or not?

A. Yes, sir, timber nearly all over it.

Q. What kind of timber?

A. Mostly cypress timber.

Q. How old would you say it is?

A. Well, it appears to me to be in the neighborhood of 100 years old.

Q. Well, give some reason, if you can, for taking it to
128 be 100 years old?

A. Frequently—there on the corner to sections 30 and 31 there is a cypress three recorded there in the Government field notes—recorded in 18—let's see—it was 67 years ago—to be 6" in diameter; the figures are cut in it. The tree at present is in the neighborhood of 11 to 12 inches in diameter. I cut the figures out of it and they are very plain; I know the tree isn't over a foot in diameter now, and it doesn't appear to me to be a scrub tree or in any way dwarfed in its growth. And out in the heart of sections 19, 20, 29 and 30 there are a great many trees that are double that size.

Q. Cypress trees?

A. Yes, sir. Thousands of them.

Q. Well, did you mean 20 when you said 20 just now?

A. Well, a portion of it. I meant the heart of that unsurveyed part.

Q. Do you know that it is on the surveyed part of 20?

A. No, I don't.

Q. Now, in these portions that you have just testified about, you say there is flag mixed in with them?

A. Yes, sir.

Q. The Government corner you have just spoken of finding you say the field notes speak of it as a 6" tree?

A. Yes, sir; that is as near as I remember, from 6 to 7 inches. A very small tree.

Q. You found the figures in there?

A. Yes, sir.

Q. You spoke of ridges running northeasterly and southwesterly through 14 and 12, but I don't believe you said how many?

129 A. I wouldn't say. They are scattered, and I never kept any account of them.

Q. Several ridges through?

A. Yes, sir; several of them.

Q. And some of them with gum timber?

A. Yes, sir, gum timber will be found on very small batches of cane—gum and cane, and on the highest quite good size gum trees.

Q. Well, about what diameter?

A. Well, I don't remember taking any particular note of the diameter; something like 12, 14, or 14 inches.

Cross-examination.

By Judge HUGHES:

Q. What sort of timber did you say was in that flag?

A. What flag is that?

Q. The one you first talked about?

A. I don't remember what that was.

Q. Well, the flag shown on Collins' map west of the one you show on your map?

A. Why, there is cottonwood and cypress, and some scattering ash.

Q. You speak of there being no place there bigger than five acres that you saw that didn't have any timber on it?

A. None that I saw.

Q. Well, there is a whole lot of scrub timber, isn't there?

A. No, sir; not in that particular neighborhood—I didn't see a great deal of it.

Q. Well, is it all covered with fine timber, same as the surveyed land, the region that he shows there to be flag?

A. A good part of it is, yes, sir.

130 Q. Well, what part of it?

A. The part of it where I run my line across was.

Q. Where did you run your line across?

A. It would be on the line of 11 and 14 if that line were run.

Q. Did you run around that flag there to see how much of it there was?

A. No, sir; I didn't see any flag openings there to run around.

Q. How many times did you cross that place?

A. I went across it once with a line.

Q. Well, what else did you cross it with?

A. I walked across it maybe once or twice.

Q. Did you make any note of the size of it?

A. No, sir; I couldn't make any note of the size of something I didn't see. I didn't see any flag opening there.

Q. Well you saw flag?

A. Scattered among the timber, yes, sir. But I never made a note of it.

Q. You talk about a cypress tree there that you cut the Government mark out of, is it green or dead?

A. Green.

Q. You know a cottonwood up there on one of those corners where the mark is cut out?

A. Yes, sir.

Q. How deep is it in to the Government mark on the cottonwood?

A. In the neighborhood of 14 to 16 inches.

Q. How big is the tree?

A. In the neighborhood of 40 inches.

Q. One of those cypress trees that has a Government mark on it is dead, or the heart is dead, isn't it?

131 A. I don't know which one you are speaking of. There are about thirty corners in there.

Q. Didn't you see a dead one in there that had a Government mark on it?

A. I don't believe I did, no, sir.

Redirect examination.

By Judge NORTON:

Q. I forgot to ask you about Township 14 North, Range 8 East? Are you familiar with that, Mr. Calhoun?

A. Yes, sir.

Q. I want to ask you the extent of flag up in that township, if there is any?

A. Yes, sir, there is quite a considerable number of flag openings.

Q. Do you know whether it is a township laid off in sections or not?

A. Yes, sir; it is sectionized by Government Surveyors.

Q. How are the flag openings up there compared with the flag openings in 12–7?

A. Well, to all appearances it is about the same character of openings and the same character of country.

Q. When were you up in 14–8?

A. 1903, I believe.

Q. 1903?

A. Yes, sir.

Q. Surveying?

A. Yes, sir.

Q. When you were in 12–7 in connection with the work
132 you have recently done in there how long were you in there?

A. About 55 days.

Q. 55 days?

A. Yes, sir.

Q. That was the work you did for the Levee Board?

A. No, it was the work I did for Mr. Ritter.

Recross-examination.

By Judge HUGHES:

Q. Are the flag openings in 12–8 as big as the one in 12–7?

A. I don't think so—not quite as large as the ones in 12–7.

Q. Well, how large are they in 12–8?

A. Well, I couldn't say as to the area of them. They are quite large openings; large open lakes, and a great many acres of them.

Q. That is so indefinite we can't get much information out of it. A "large lake" is a relative term. That is the best information you can give us about it?

A. What was the question?

Q. I asked you how big they were?

A. Well, I have seen flag openings up there with as much as forty acres in them—open lakes.

——.

Sworn to before me this 5th day of February, 1908.

——,
Notary Public.

My Commission expires ——, 190–.

133 *Deposition of G. B. Baskerville.*

Mr. G. B. BASKERVILLE, JR., being first duly sworn, deposes and says:

Direct examination.

By Judge NORTON:

Q. Please give the stenographer your name?
A. G. B. Baskerville, Jr.
Q. About what is your age, Mr. Baskerville?
A. 32.
Q. Your business?
A. Civil Engineer.
Q. Where do you live?
A. I live in Memphis, when I am not at work on the outside.
Q. Were you ever engaged as surveyor to do some work in township 13 North Range 8 East in Northeast Arkansas?
A. Yes, sir.
Q. Do you remember about when that was?
A. That was in October, 1906.
Q. What part of the township were you working in?
A. I was working in the Southwest portion.
Q. Does the Right Hand Chute of Little River run through there?
A. I don't know whether I know the Right Hand Chute of Little River. There was a river through there that they called the Old River.
Q. You can say where you were by sections, if you don't know about the chute?
A. I was in sections 21 and 28, and section 29, and between sections 27 and 34, and between sections 15 and 16. That will give the location.

134 Q. What is the nature of the country in there? That is, what is on it? What is growing on it?
A. Well, there is timber, cleared land and flag openings.
Q. Some cleared land in there, is it?
A. Yes, sir; the inhabitants in there farm it.
Q. And some flag openings?
A. Yes, sir.
Q. Now please state as near as you can (I know it will be a matter of estimation) but give the area of flag openings in that neighborhood, as near as you can?
A. Well, about the best idea I got of the flag openings was in running west between sections 20 and 29. I run three quarters of a mile and set a ¼ corner willow post in flag openings, from whence a cypress 30 inches bears north, et cetera. It shows that there was a tree there, and I was right on the edge, and then I ran south in the northwest ¼ of the northwest ¼, and the northeast ¼ of the northwest ¼ of Section 29, and that south run was altogether in flag openings. I set a post at the center of the northwest ¼ of Section 29—no trees near at all—I set a 3" willow post in the flag opening.

and this flag opening was along a lake like, which might be considerably over a mile long, and nearly a mile, if not a mile wide, and this is about the biggest batch of flag opening I struck on that survey.

Q. And you say there would be something considerably over a section at that point?

A. Yes, sir.

Q. Now, say to what extent you found other openings in that general neighborhood. State within the township?

A. I didn't find any other openings on that survey. I only found other openings when I was going out.

135 Q. Well, I want you to testify to any openings you know to be there, whether you surveyed them or not?

A. Well, the openings I saw coming out I wouldn't know whether they are in that section or not. I wouldn't know just exactly where they were. I would know they were somewhere in the adjoining section, but in that section I wouldn't know exactly where they were. I cannot testify as to where the line is. This opening I saw I knew exactly where it was located.

Q. Well, in going away from there you encountered other openings?

A. Yes, in coming away we came through other openings, lakes, sloughs, and things of that sort.

Q. Well, how far would that be from the one you know by survey?

A. Well, we came through in a boat, and they were a considerable distance. Our general direction was somewhat north. I can't tell exactly how far they were.

Q. Well, would they be far enough to take you out of the township?

A. I think they would.

Q. Well, what township would they take you in to?

A. Well, I must acknowledge that without a compass I am a pretty poor witness. I wouldn't really know. My impression though (I don't guess that would amount to anything) but my impression would be that we went in a kind of northeasterly direction; let's see—we started out more in a westerly direction than we did north, and finally turned around to the north, but I am a poor woodsman without a compass.

Q. Anyhow, you came to other flag openings?

A. Yes, sir.

Q. Well, all told, how long was your trip when you went out?

136 A. I believe we went—It seemed like a thousand miles, but I don't think it was more than 40. I was toting a big bundle on my back, and it seemed——

Q. It was about 40 miles, was it?

A. Yes, we went up to Monette.

Q. Who was with you?

A. Mr. Wallace was with me.

Q. Was Mr. Ritter with you?

A. No, not on the return trip. We was down on the survey but

he left us before we made our return trip overland, walking part of the way, and the first portion of it we made in a boat through little drains, flag openings and lakes and wher-ver we could find water to row in.

Q. Where did you start from to go in there?

A. We started from Marked Tree; that is, I went from Memphis to Marked Tree on train, and then we got in a gasolene boat and went up Little River until we got to what they call Old River—I believe I did hear something about Right Hand Chute, but I don't remember whether what they call Old River is the Right Hand Chute or not. I am not familiar with that point.

Cross-examination.

By Judge HUGHES:

Q. George, did you ever survey any of these unsurveyed lands?

A. No, sir.

Q. Ever follow any of these meanders around unsurveyed lands in the bottom?

A. Well, I have never followed them. I have run across them in the surveys and the original notes.

137 Q. Where, for instance?

A. I believe we had down here in Crittenden County. We had a meander—I don't remember what section it is—it is the southern part of Crittenden County—we meandered one of those bayous down there, and I believe on this survey we meandered part of that old river that the notes call for; I just remember running across them in the notes, but the meander notes that I run across were merely where a stream of water went through the section and the notes went on across the section in every case to a corner; they didn't stop on a lake or anything of that kind.

Q. You have never had occasion then to investigate any considerable tract of land that is in controversy as unsurveyed land?

A. No, I have never been fortunate enough to get a job of that kind.

Q. Well, in this case (handing witness plat) turn to 12-7, 12 North, 7 East?

A. Yes.

Q. You see it?

A. Yes, sir.

Q. You will note on the township plat which you have before you of 12-7 a large body of water meandered called the Right Hand Chute of Little River Sunk Lands, embracing several thousand acres. Do you find it?

A. Yes, sir.

Q. Surveyors acting in behalf of both parties to this law suit have followed that meander line, and one of them states that they found perhaps 30 Government corners there?

A. Thirty?

Q. Yes, in the course of that meander.

A. Were they section corners or meander corners?

138 Q. Section corners. They don't mark meander corners, do they?

A. Yes, sir.

(Here Mr. Calhoun, former witness, interrupted the proceedings to state that he thought he had been misunderstood as to the number of corners, whereupon Judge Hughes made the following change).

Q. Well, change that to a very considerable number, I will say, of Government section corners. Would you infer from that that the line was actually run, or not?

A. I should think if they found the Government marks and cut out the Government marks that that would be positive proof that the line was run.

Q. Well, as an engineer, suppose it should appear now that there is land and timber on both sides of that line, how could you account for the action of the engineers in having run the line there?

A. The meander line so as not to include all the timber?

Q. Yes.

A. Well, I suppose they encountered something like I did on my survey in 13-8; found so much water that they could not wade it.

Q. Might it not be possible that there have been changes in the face of the country since this survey was made?

A. Well, the survey I made was made eighty odd years before I was there, and there is bound to be changes in the country in the matter of tree growth, but you will find in some respects that the topography is remarkably the same.

Q. Well, you surveyed no unsurveyed lands at all?

A. No, sir.

Q. In the topography of the land where survey has been made you found no changes?

A. I found some changes, but they are remarkably alike the original. Of course, there are some changes.

139 Q. Suppose that the territory shown there to be a body of water was in fact water at that time—Have there been any forces operating over that country within that time which would be sufficient in your judgment to change the face of the country and cause land to build up there?

A. To cause land? Well, sediment?

Q. Yes, sediment or any other cause?

A. I am afraid that you are talking about something that I don't know what changes have taken place in.

Q. Well, a great part of what is shown there as water is now land; so much so that some witnesses say you can't tell the difference on one side or the other of the meander line?

A. Well, you know that country was subject to overflow and when a man would go in there on a survey if it was high water he would hit deep water sooner than he would if it was low water, and I would think, just from my observations where I have been that the changes that would occur in say approximately 80 years would not be enough to account for the difference in the map as shown

and as it really exists. Probably the difference is due to the fact that when they were in there surveying the land was more or less overflowed.

Q. Does that plat show the date of this survey, the month and year?

A. This is not an original Government plat and it doesn't show that, but the original Government plat does show it.

Q. Well, say that survey was made in the dryest month of the year—As a matter of fact, it was made in October and November—Well, I will not question you any further about that, George. You have not given that any thought, have you?

A. Well, no.

—— ——.

Sworn to before me this 5th day of February, 1908.

—— ——,
Notary Public.

My Commission expires —— —, 19—.

140 *Deposition of W. B. Miller.*

Mr. W. B. MILLER, being first duly sworn, deposes and says:

Direct examination.

By Judge NORTON:

Q. Mr. Miller, you have testified in this case before?

A. Yes, sir.

Q. I show you a map attached to the deposition of Mr. Collins in this case, and I will ask you if you have been over the area that he undertakes to represent as flag in the southeast corner of 11 and the northeast corner of 14 and the west half of 12. Have you been out in there?

A. Yes, sir.

Q. Well, do you see a representation made on that map about flag openings?

A. Well, now, is that flag opening here, is that supposed to cover that much of that section?

A. Yes, sir.

A. Now, the lines that we run through here——

Q. State where?

A. The line between 12 and 13 and 11 and 14 and 10 and 15 we run that line through there and took photographs and made notes.

Q. Did you cross any such flag as represented there?

A. No, sir; not such flag as represented in between Sections 12 and 13.

Q. You say you took some pictures as you went across there?

A. Yes, sir.

Q. Well, aside from the running of that line, have you been out through there any?

A. I think we have got a photograph of this very point here?

Q. What point.

141 A. It is on the line between 11 and 14.

Q. Run through those pictures and see if you can find the one?

A. Now, here is a picture of this corner, a picture of the corner on the meander lines between Sections 13 and 12, but that don't have any bearing on the question you asked me.

Q. Well, pick up one that does?

A. Now, this picture here is the only thing that has any appearance of an opening after we passed the opening that appears on this map between 12 and 13—then the only thing in the nature of an opening on that line going west is shown in this picture.

Q. Well, write your name on it and file it as Exhibit "A" with your deposition?

A. I do so.

Q. Now, say where it was?

A. It was perhaps a quarter of a mile west of the corner of sections 12, 11, 14 and 13.

Q. Did you get any more on that line?

A. Then, there is another one of the southeast corner of 11. It was after taking this picture, and further west, that we took the other.

Q. File that with your deposition as Exhibit "B."

A. I do so.

Q. See if you find another?

A. There is another picture here. Let's see. It is the center of northwest ¼ of Section 15—12—7 looking northeast into the sunk lands. Have you got the notes made by Mr. Roleson?

Q. You mean by Mr. S*gae*?

A. We have got the negatives from which this was made. It is blurred in there. I am inclined to think that is the other picture that we made on that line, but in view of my inability to read it there I won't say for certain, but I will say that on that line

142 that we run through there that we found no openings outside of this one right here—Right where this log lies about ¼ mile west of the corner between sections 11, 12, 14, and 15.

Q. Don't you mean east instead of west?

A. No, here is the corner I have reference to, and I suppose this is west.

Q. Well, did you find any openings out there?

A. No, sir. Didn't find any opening at all.

Judge Norton being convinced that the witness had erred in giving his directions in his answer third above, the answer was repeated to him (the witness) who asked permission to correct it. The corrected answer is as follows:

"We found no opening west of the corner of 11, 12, 14 and 15. That photograph with my signature on the back and "A" is made at a point about ¼ mile west of the corner of sections 11, 12, 13 and 14, right where that shows to be a flag opening."

Q. Well, now on this map of Mr. Collins, you will notice it repre-

sents a flag opening extending about a mile northwesterly and southeasterly and lying in the northeast of 14, southeast of 11, and the west half of 12. Have you ever been in there and over that country?

A. I never went north of that line in section 11 or 12.

Q. Can you say about south of it?

A. But I was on sections 14 and 13.

Q. Then, how is the flag on these sections?

A. I found a flag opening on both of these sections but in no place over 100 yards wide—no place—that run from northwest to southeast, and these openings were covered with small timber, small cypress and elbow brush. And that, I think, conveys about all my knowledge of it.

Q. I now hand you a picture, which please identify with your signature and file with your deposition as Exhibit "D."

143 A. I do so.

Q. I will ask you what the dark object is shown in the picture on the lower one of the three boards against the tree?

A. That is coal, or supposed to be coal; has the appearance of coal, that Mr. Sage, Mr. Roleson and myself gathered up at different places on the sunk lands, and we piled it up there on those old sticks as a white back ground for the purpose of photographing it.

Q. How far away from the place you took the picture did you pick it up?

A. We picked that up here.

Q. Well, don't say "here"?

A. Well, let me find it and locate it myself, we picked that up on the southeast part of section 14, and the southwest part of section 13. There is some of the same coal photographed there; we didn't have any back-ground to show it but it is on top of a corner.

Q. Within that unsurveyed area, as it is called, Mr. Miller, how frequently did you find bunches of coal?

A. Well, there is a ridge running northwest and southeast (referring to map) that runs down through section 11, part of it in the northwest part of 14 and all down through 15 that had more or less scattering cane on it.

Q. And what kind of timber?

A. Good, big timber.

Q. What growth?

A. Cottonwood, cypress and ash.

Q. Any gum?

A. Some gum.

Cross-examination.

By Judge HUGHES:

Q. Now, whereabouts is it that you found that stuff you

144 call coal? You speak of the southeast part of 14 and the southwest part of 13. Now, how near the corner was it that you found that stuff?

A. Now, that is what you call Bar Camp Run, Judge. We pho-

tographed the coal in this corner but we gathered it out on Bar Camp Run—out on the sunk land—particularly along that run.

Q. You gathered it all in 14 then, didn't you?

A. Well, in following this meander line alone—we started out from camp here, we began to gather that and we had some picked up when we got there, and by the time we got up here we had some more, and the photograph we show here we gathered there. We had two pictures of coal. That is the reason I had in mind where we gathered it.

—— ——.

Sworn to before me this 5th day of February, 1908.

——— ———,
Notary Public.

My Commission expires —— —, 19—.

145 *Deposition of James Anthony, Re-called.*

Direct examination.

By Judge Norton:

Q. Mr. Anthony, I will show you a plat that was exhibited to the deposition of Mr. Collins in this case, and he has stated that the marking in the southeast of 11, northeast of 14, and west half of 12 indicates a flag opening. I will ask you if you were ever in that vicinity, and if so, how much?

A. Yes, sir, I have been all over it.

Q. All over it?

A. Yes, sir. Rode over it on horse-back time over and again.

Q. Now, just say to what extent there is flag out in there?

A. Well, in the survey of this that is marked in here on this plat I presume they show that flag occurs there, but we make a distinction between flag that grows in the woods and a flag opening. A flag opening is just simply an opening with flag, and the condition of the ground, the tufts of the ground, they stick up from a foot to a foot and a half in the loose mud and in the water, forbids any timber to grow. A flag opening is an opening with flag in it that seldom ever goes dry; not in the dryest season can you walk across them without sinking up to your knees. In 12-7 there is flag but wherever this flag occurs in 12-7 it dries up in the summer time and you can ride across it on horse-back. The ground is solid and it don't kill out the timber. I suppose they call it an opening because there is small cypress and the small growth of willow, which makes it an opening compared with the solid timber, but it isn't what we call a flag opening.

Q. There would be some flag in it, would there?

146 A. There would be along on the ground, yes, but where you run lines through these places even if you walk in water you step on solid ground, and if you run a line through a flag opening you are lucky if you keep your head out of the water. Beneath

the water there is at least two feet of mud, and there is tufts, more like an Irish Bogue than anything else and you will have to take these tufts and move them aside, and sometimes then they will do you like they did me, throw you down in it, tripod and all, but as far as 12-7 is concerned, there is no flag in 12-7 that I would call a flag opening. There is flag growing in there and the reason that it is open is just simply that it grows up in young cypress, bull cypress as we call it, and willows. That is in 12-7. North of here you can find flag openings.

Q. North of 12-7?

A. Yes, sir.

Q. Where would they be?

A. Up in the extension of the Right Hand Chute. I think it is in the northeast corner of 36, but the flag openings don't never amount to very much.

Cross-examination.

By Judge HUGHES:

Q. What explanation, Mr. Anthony, from a scientific standpoint, can you make of the condition of the bottoms of these flag openings?

A. Why, the flag openings are very extensive in 12-6, and as I have stated, there is very close to the range line in 12-7 and 12-6 in 24, the south half of 24, there is flag opening. The only explanation that I can make of them is that it is a quick sand that by some reason or another has been pressed from all sides into a cer-
147 tain place. I give to the flag opening the same thing as you will give to a sand blow. You have traveled through the Mississippi bottom up in the St. Francis Basin, and up there you will find, in the heaviest buckshot land in the world you will find a half acre of sand appearing, naked sand.

Q. Well, I understand you to say that the bottom of these flag openings had mud in them?

A. About two feet.

Q. Well, that is not sand is it?

A. No, it is more in the shape of silt than anything else, and these tufts that grow up, why they grow 2½ feet with grass on top of them.

Q. Don't these flag openings finally grow up in timber?

A. I have never seen one. They are not large you know. Flag openings are not large. They comprise sometimes 2½ or 3 acres. That is as large as they get in 12-6. There is nothing you know for timber to grow on. You take that flag opening, the subsoil of it, down there the mud and then down there the sand, that would mean that the timber would have to stand in water all the time, and in the bottom up here I suppose if you take timber outside of cypress and let it be continually submerged for three years it will die.

Q. What kind of a soil does it take to grow this flag?

A. Oh, you happen on flag along everywhere, any and everywhere all through the bottom.

Q. It only grows in wet places, doesn't it?
A. Yes, sir; it only grows in wet places.

Redirect examination.

By Judge HUGHES:

Q. What you call a flag opening, then, Mr. Anthony, is a place where there is that degree of mud and water that nothing
148 but flag will grow?

A. Nothing but flag can grow. Of course, you know if timber is submerged constantly with water it will commence dying in three years. Let water stand on timber all the time through the summer, the sap dries up and that kills it. We have got lakes today that was the finest growth of timber in the country, yet today it is open lake; the water stood on it and killed it.

Q. Well, may some people understand a flag opening to be an area on which there is no timber regardless of what the bottom—the soil—may be?

A. Yes, when they speak of flag openings as they do in 12-7. A public road that goes from Le Panto, as it is now, that went right straight north, turning around section 15 and went right through that opening, they were going through there to get up the upper settlement.

Q. Section 15 in what township do you mean?

A. 12-7.

Q. There is an opening in there, is there?

A. No, but turning on 15 and going east you strike the bottom of the Right Hand Chute.

Q. And flag grows there?

A. Yes, and you strike right across when you come in there and there is nothing else but small cypress and willow growth.

Q. It is not a muddy bottom opening?

A. No, it is good and solid.

Recross-examination.

By Judge HUGHES:

Q. Well, in a place of that sort now good timber will finally grow, won't it?
149 A. It would, yes.

Q. Where the cypress and scrub stuff grows that would finally produce good timber?

A. I think that the reason there are openings is that there is too much water on the land. It is the last thing that goes dry and even in the dry season it won't be bereft of water for more than thirty days.

——— ———.

Sworn to before me this 5th day of February, 1908.

——— ———,
Notary Public.

My Commission expires ——— —, 190–.

150 *Deposition of E. Ritter.*

Mr. E. RITTER, being first duly sworn, deposes and says:

Direct-examination.

By Judge NORTON:

Q. Please give your age and residence, Mr. Ritter?
A. 43. Marked Tree, Ark.
Q. Your occupation?
A. Well, real estate dealer, I guess.
Q. Are you interested in some of the lands that are known as the unsurveyed lands in Township 12 North Range 7 East?
A. Yes.
Q. Who is interested with you?
A. Bluthenthal & Heilbronner.
Q. Well, of the unsurveyed lands in that township, as they are called, what portion of them are you interested in, Mr. Ritter?
A. In all of the unsurveyed lands in township 12-7 except on the St. Francis side.
Q. How long have you owned these lands—you and your co-owners?
A. About two years. It will be two years next April.
Q. Have you paid taxes on them?
A. Yes, sir.
Q. State, County and Levee?
A. Yes, sir. For two years.
Q. You acquired them from the St. Francis Levee Board?
A. Yes, sir.
Q. Did Mr. Calhoun do some surveying for you and your co-owners?
A. Yes, sir.
Q. That was the Mr. Calhoun who testified here?
A. Yes, sir.
Q. Were you in there with him more or less?
A. I was in there with him a number of days.
151 Q. Were you about the southeast corner of 11?
A. No, I wasn't up there.
Q. Were you not at that point?
A. No, sir. I run the meander line along 22, 15, 16 and 14.
Q. Along the meander line?
A. Yes, sir.
Q. You were not out in the interior at all?
A. No, sir.
Q. Well, along where you went on that meander line, what is the nature of the timber on either side?
A. I couldn't tell any difference.
Q. Couldn't tell any difference?
A. None at all.
Q. Well, how about the surface of the ground?
A. In 14 the meander line crosses a ridge.

Q. The ridge runs in what direction?
A. Northeasterly.
Q. What was on it?
A. Cane and gum timber.
Q. How far does that extend from the meander line?
A. I didn't go off the meander line.
Q. You didn't leave it very far?
A. No, sir.
Q. You don't leave it very far?
A. No, sir.
Q. But you could see it some distance?
A. Yes, sir.
Q. You don't know about the flag in the timber about the south east of 11—Were you with the parties that took the pictures?
A. No, sir.
152 Q. Have you ever had any survey made in 13-8?
A. Yes, sir.
Q. When?
A. September, October and November, 1906.
Q. Who did that work for you?
A. George Baskerville.
Q. Was Mr. Wallace with him?
A. Yes, sir.
Q. Were you with him?
A. Yes, sir.
Q. I will ask you to say up there—what you found up there in the way of flag openings?
A. I found, in my judgment, about 2000 acres. I had an option on 8000 acres of timber land up there, and it was agreed by myself and others that we would talk the matter over with Mr. W. C. Dewey, and his report was also that there was about 2000 acres of open lands called openings, I believe.
Q. You mean flag openings?
A. Yes, sir; openings that flag grew on where there was no timber.
Q. You mean Mr. Dewey of the Chapman & Dewey Lumber Company?
A. Yes, sir; they recently purchased or traded for the land themselves.

Cross Examination waived.

Sworn to before me this 5th day of February, 1908.

Notary Public.

My Commission expires —— —, 190–.

153 In the Chancery Court of Poinsett County, Arkansas.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT,
vs.
CHAPMAN & DEWEY LUMBER COMPANY et al.

The depositions of S. A. Sage, G. W. Calhoun, Wm. H. Collins, J. A. Omberg, Jr., and Capt. W. D. Connor, taken at the office of the St. Francis Levee Board, in the Randolph Building, in the city of Memphis, County of Shelby, State of Tennessee, on this the 29th day of January, 1908. Also the depositions of Geo. H. Harkins, taken at the same time and place.

Present:

Mess. N. W. Norton & H. F. Roleson, for Complainant.
Judge Allen Hughes, for Defendant.

All formalities waived, except as to incompetency, irrelevancy, and immateriality.

154 *Deposition of S. A. Sage, Recalled.*

Mr. S. A. Sage, (Re-called).

Direct examination.

By Mr. ROLESON:

Q. You are the same Sage who testified in this case once before?
A. Yes, sir.
Q. Judge Norton conducted the other examination for the Levee Board, I believe?
A. Yes, sir. I think so.
Q. Now, at the time you gave your testimony before, I believe certain pictures were introduced, were they not?
A. Yes, sir.
Q. Mr. Sage, at the time you went over these lines in 12-7 and the pictures were taken, was any timber measured at these various places?
A. Yes, sir: there were timber measured.
Q. Who measured it?
A. I carried the chain around.
Q. You measured it with a surveyor's chain?
A. I measured it with a chain 100' long, and with links 12" long. Not a regular surveyor's chain.
Q. Was a memorandum of these measurements kept?
A. Yes, sir.
Q. How did you keep it?
A. Kept it on my little book.
Q. Who put down the numbers on there?
A. Most of the time you put them on there.
Q. You measured and called it off?

A. Yes, sir; and you put it down.

Q. Have you that book with you?

155 A. No, sir, I have not.

Q. How does it happen that you haven't it here?

A. Well, it was about full and I filed it away at home.

Q. You did not understand that you were to bring it here?

A. No, sir; didn't know that it was wanted.

Q. You can get it, can you?

A. You mean the original book?

Q. Yes.

A. Yes, sir.

Q. I will ask you, Mr. Sage, if you have seen a type-written copy of these minutes?

A. Yes, sir, I have a copy.

Q. You have a copy?

A. Yes, sir.

Q. Mr. Sage, have you compared that copy with your book?

A. I compared most of it—not quite all. I got through a good part of it, and in one place I believe it said "diameter" when it should be "circumference"—somewhere in the typewritten copy.

Q. Yes, probably so. You corrected it on the typewritten copy?

A. No, sir; I did not.

Q. You didn't correct it?

A. No, sir. At some place it said "diameter" when it——

Q. Well, all right. I have here a carbon of the copy you have, Mr. Sage, which I wish you would file with your deposition. It is a showing of the measurement of the timber at the different places indicated.

A. I do so. Now, if you come up on a place where it says "diameter" it should be "circumference". (The copy referred to was here filed with the witness' depositions, marked "Exhibit 'A' ").

Q. At the southeast corner of section 11-12-7 I see it says

156 nothing about either circumference or diameter; it should be circumference, I suppose.

A. Yes, sir; it should be circumference all through.

By Judge NORTON:

Q. Mr. Sage, in this typewritten paper that you filed as an exhibit to your deposition, and which you took measurements on 12-7 in last November, I find on the first page the words "Cottonwood 11.3" Now, what does that mean?

A. That is the circumference—around the tree.

Q. Well, the next thing under that says "Cottonwood 11' "?

A. That is circumference again.

Q. Well, then it says "Cypress 9.8' "?

A. Yes, sir, that is circumference also.

Q. Now, such phrases as that occur all through this paper?

A. Yes, sir, and they are all circumference—not diameter.

Q. What I want to know is are they all the result of actual measurement?

A. Yes, sir; with a 100' chain with 12" links—not a regular surveyor's chain.

Q. Well, there was nothing in the chain that would keep you from getting accurate measurements?

A. Well, you know the longer the links were the higher they would stand up from the tree, and would naturally make the tree appear larger.

Q. Well, with that exception they are all accurate?

A. Yes, sir; but you know every time there would be a stiff link in there there would be a little elbow which would make it stand off.

Q. But they are all correct, made that way, and made by you?

157 A. Yes, sir, I made the estimates of all the trees on there.

Q. Well, do these phrases such as I have showed to you occurring in this paper note a condition descriptive of the place where they—or rather, the measurements—are taken?

A. Yes, sir; as near that as we could get in within a reasonable expense.

Q. Yes, I see. Now, are any of these measurements taken on what we call surveyed land?

A. I think so. I think we measured some.

Q. And when they are they will show it, will they, by the location given here?

A. Yes, sir.

Q. Well, to what extent were they taken on unsurveyed land?

A. Most all of it.

Q. Most all of it on unsurveyed land?

A. Yes, sir.

Q. Well, how did you describe the locality when you were on what is called unsurveyed land?

A. Well, Mr. Calhoun run the line and I followed him along most of it. On some of it we had the line run before, and we would go out on the interior line near this point. Myself and Calhoun had either run them or we followed, or we followed where he had rune the line.

Q. Then, in this unsurveyed land you refer, in your exhibit, to the land run by section, and you mean sections run by Mr. Calhoun?

A. That would be about correct—or, the surveys already made.

Q. By the Government?

A. Yes, sir.

Q. In the testimony given in this case there is something said about a flag opening—About where does that occur?

158 A. The flag opening where we taken the picture. Let's see. It is along on the south side. I will have to have a map—I have forgotten. It is near the line of 12 and 13 where we struck the flag opening; I think it is a little north of the line.

Q. Now, 12 and 13 are sections in the unsurveyed lands, are they?

A. Partly.

Q. Had section lines been run across what we call the unsurveyed lands when you first went in there?

A. Yes, sir.

Q. Do you know who run them?

A. Mr. Anthony, or his man.

Q. About how long ago did he run these unsurveyed lands off into sections?

A. I don't know—something like five or six years.

Q. Now, to get back to that flag opening—I want to ask you, Mr. Sage, if these flag openings do not occur very frequently throughout the St. Francis Basin on surveyed land?

A. Yes, sir; I think so.

Q. Mr. Sage, what is called the right hand chute of Little River is what kind of a stream with reference to banks, or the absence of banks?

A. You mean what kind of a stream is it?

Q. Yes.

A. Why, the right hand chute, in most parts, is a pretty fair river, but in some places it is all scattered and runs water in a great many directions.

Q. Well, where you call it a pretty fair river, has it banks there?

A. Yes, sir.

159 Q. Well defined banks?

A. Yes, sir, pretty good banks, some parts of it.

Q. Well, now in what sections would that be, looking at the map?

A. Well, you know the best part of the right hand chute is north of all this—north of the first scatters it is a pretty fine river, then you strike the scatters, and then come out where it is a pretty good river again. Now, for instance, along there by sections 15 and 16——

Q. You mean 12 and 13?

A. Yes, sir. Along there is it a good river. A nice river.

Q. About how wide a stream is it?

A. I never measured it.

Q. I mean estimate it?

A. Probably 200'—I don't know.

Q. Well, for what distance has it there well defined banks at that place?

A. I didn't measure it.

Q. I mean estimate it.

A. I don't know that I could estimate it at all. In some parts of it it is a pretty nice river along there.

Q. Well, does that channel continue, you think, along down to the township line?

A. No, sir, it scatters before you get to the township line. It scatters along in 31. I know I surveyed 31 for Mr. Rowell.

Q. Now, where there is a channel, does it get dry there?

A. No, sir; I haven't saw it dry in two or three seasons. You know there are some ditches up in Missouri that run all the time—the year around—and this is the way they come down. It used to get dry.

Q. Well, when you say "used to" how long do you mean? Say ten years—or we will say 20 years?

160 A. I have saw it dry, but——

Q. Well, say thirty years ago?

A. I have saw it dry, let me see, I don't know whether it was exactly thirty years ago or not, but way back there I have saw it dry, back a good many years ago. It was dry except in the big holes.

Q. I understand there would be deep holes in it that wouldn't get dry?

A. Yes, sir; and lots of fish in them. I know we used to catch all the fish we wanted.

Q. Well, how long ago was it when you first saw it?

A. When I first saw the chute?

Q. Yes.

A. Let's see, I don't remember, the first time I remember seeing the chute I was about 15 or 16 years old.

Q. And how old are you know?

A. 50, this month.

Q. Did you see it frequently while you were of that age?

A. Quite often. I saw it a number of times, and all along ever since I have saw it occasionally.

Q. Now, please state any difference there is in that right hand chute of the Little River and the scatters there right now, and when you first saw it?

A. I don't know of any difference. About the same I guess. The changes are so slow that I couldn't notice them by looking at it.

Q. Were these well defined banks there when you first saw it?

A. It looks about the same.

Q. About what distance is this area we are talking about from the Mississippi River?

A. I don't know that I know the distance.

161 Q. I didn't catch your answer?

A. I don't know the exact distance.

Q. I don't want you to give the exact distance, but get it on paper—estimate it?

A. It must be 18 or 20 miles—probably more; I don't know.

Q. I believe you stated that the flag opening was in 12 and 13?

A. There is a flag opening there. That is where we made a picture.

Q. Well, was that flag opening there when you first saw that country?

A. Yes, sir; I hunted cattle in there the first time I went up in there.

Q. In your surveying work in that area did you or not frequently find the Government corners—marks made by the Government Surveyors?

A. Yes, sir; I found them in some places; several corners.

Q. About what distance from the ground did you find these Government marks?

A. I don't think I measured any. Probably 4'; possibly more. I don't know that I measured any of them. Some were not that high. They would vary some in their heighth from the ground.

Q. You mean that all of the marks were not the same heighth from the ground?
A. Yes, sir.
Q. Do you know what caused the variance?
A. I suppose it would be a nice place to chop on the tree, and they would just chop and make it as they do now.
Q. The surveyor does that now, does he, because it is an easy place to chop on the tree?
A. Yes, sir; because it is an easy place. Yes, sir, naturally.

162 Cross-examination.

By Judge HUGHES:

Q. These trees in which the Government marks are made all stand on surveyed land, of course, don't they?
A. I think they do.
Q. Well, the surveyors don't go in unsurveyed land to make marks on trees, do they?
A. I don't think so.
Q. Why would they?
A. I don't remember seeing a tree on unsurveyed land that had a Government mark on it.
Q. Well, the Government survey mark means that it has been surveyed, don't it? That's what they put it on there for, isn't it?
A. I don't know, I suppose——
Q. Well, do you know of any reason why a Government Surveyor would put a mark on unsurveyed land?
A. Well, no. I don't know why he would or why he wouldn't.
Q. Well, you ought to know why he wouldn't.
A. I never remember seeing it on unsurveyed land anywhere.
Q. A Government corner is a mark designating a corner in a survey, and if there is no survey there is no use of making a mark, is there?
A. I wouldn't think so.
Q. You have lived in the bottom a long time, have you not?
A. Most all my life.
Q. Is it, or is it not true that there are considerable portions of the sunk lands which were within your memory open lakes that are now grown up in timber?
A. There is some grown up in willows that I know was
163 open.
Q. Is that all. Is all the timber Willows?
A. All that I noticed particularly.
Q. Don't you know that some of it has grown up in cottonwood and cypress?
A. I don't remember seeing any cypress grown there since I remember it.
Q. You know where the Frisco crosses the lands referred to?
A. Yes, sir.
Q. You know when that road was built?
A. Yes, sir.

Q. Can you recall the time when that was an open lake there?
A. No, sir; that was all brush ever since I remember.
Q. To the north of there, how far?
A. Probably ½ or ¼.
Q. Well, there is some good timber on it now, isn't there?
A. Not in the part that I call brush; that is still old brush, elm, and willows.
Q. Well, you were better acquainted with the St. Francis sunk lands than you were with this right hand chute, were you not?
A. Yes, sir.
Q. Do you say that the St. Francis sunk lands are in the same condition now that they were thirty-five years ago?
A. About the same, only they get wetter every year.
Q. Get wetter every year?
A. Seems that way to me.
Q. You don't see any growth in timber or any increase in elevation?
A. Oh, well, it grows you know but I can't see that it grows to amount to anything by just looking at it.

Q. And you think, do you, that the timber now on the
164 unsurveyed land is the same size as it was when you first saw it?

A. No, I said just now——
Q. That it had grown so little in thirty-five years that you couldn't tell the difference?
A. I can't see much difference in it.
Q. Now, don't you know it to be a fact that a cottonwood tree will grow two or three feet in diameter in that time?
A. No, I don't.
Q. How far from your line around Bar Camp Lake is the Anthony line?
A. You mean the meander lines——
Q. Yes.
A. I didn't run any part of it.
Q. You saw it run and helped run it, didn't you?
A. I saw some of it run.
Q. How much does it vary from the Anthony line?
A. I couldn't tell you.
Q. You saw Anthony's blazes, didn't you?
A. In some places we saw the marks.
Q. Doesn't his line lie 100′ from yours and Calhoun's?
A. In some places about 80′, I think, I never measured it.
Q. You speak of this right hand chute scattering, what do you mean?
A. The water scatters out in little channels all around there.
Q. Little runs they call it, don't they?
A. Yes, sir.
Q. This occurs on the St. Francis, Little River, this right hand chute—all of them, does it not?
A. It does on the St. Francis a good deal.

Q. It does ordinarily wherever these sunk lands appear,
165 does it not?

A. It does in some places,—I know——

Q. Well, wherever these runs appear there is some reason for the stoppage of the river—what is it?

A. Well, I don't know that I know what the reason is. That is one thing I have always been trying to find out—what caused the sunk lands.

Q. Well, wherever you find these runs you find smart weed, flag and things of that sort that grow there, don't you?

A. Well, yes, some times——

Q. Well, wherever you find these runs you find smart weed and flag, don't you?

A. Yes, some times. On the St. Francis there are more times that it runs through flag and smart weed than it does on the right hand chute. On the right hand chute it is mostly timber on each side.

Q. It is now, but you don't know what it was when this survey was made, do you?

A. No, sir, I don't.

Q. Now, isn't it a fact that after the smart weeds and flag that timber does grow in these places and continues to grow up, first with willows and then with other kind of timber?

A. After the smart weed, then the flag and then the willow. That is as far as I know. I don't know what comes next.

Q. Well, that vegetation is a rank vegetation, is it not?

A. Smart weeds is.

Q. Well, the flag is too, isn't it?

A. Some times.

Q. Well, it is pretty big stuff and falls down and dies every year, doesn't it?

166 A. Well, it dies standing up.

Q. Well, what remains falls and settles on the ground, doesn't it, and you have a new growth the next year?

A. I never watched it.

Q. You have seen it whether you watched it or not, haven't you?

A. There is a new growth every year.

Q. Now, you speak of flag openings on surveyed lands. Where are they?

A. I saw some in Big Bay, one or two.

Q How big?

A. Small ones.

Q. You never saw any flag openings the size of this on surveyed land, did you?

A. No, sir. I saw this up in 8 there, adjoining this, a pretty big flag opening on surveyed land.

Q. There is more than one flag opening in Bar Camp Lake, isn't there?

A. Yes, sir.

Q. Do you know how many?

A. No, sir, I don't.

Q. What effect, if any, did the overflows from the Mississippi River have on the St. Francis Basin as to whether they tend to fill it up or not, or does it leave any deposit?

A. It leaves a little sediment from time to time, of course, every time it goes through.

Q. And the nearer the river the more of the sediment you get, and the slower the water?

A. I never noticed it, I think so.

Q. You know that as an engineer, don't you—if it comes
167 to a stand still it deposits more of the sediment than if it moves?

A. Yes, sir, sure.

Q. Now, you say that you made the measurements of these trees with a chain and that Mr. Roleson put them down on paper?

A. Yes, sir.

Q. How far from the ground did you measure them, Sam?

A. Well, about the heighth you would ordinarily cut a tree. Sometimes 3', sometimes probably less, and sometimes 4 or 5 feet. It depended on where I could get the chain around best.

Q. You measured the biggest trees you saw?

A. Sure.

Q. Who pointed them out?

A. I called out and measured them.

Q. Did you select them yourself, or did some one else?

A. I selected them myself.

Q. Did Mr. Roleson or Mr. Miller call your attention to any tree they wanted measured?

A. Occasionally.

Q. They didn't call your attention to a small tree?

A. No, sir; I don't think so.

Q. They were both with you when you made these measurements?

A. Yes, sir.

Q. Now, you say that this paper which you filed as an exhibit with your deposition showing the size of trees will show whether or not these measurements were made on surveyed or unsurveyed land.

A. Yes, sir, it shows there. At least, I called off if it was on surveyed land.

Q. Did you call off when it was on unsurveyed land?

A. Yes, sir; we had an understanding.

168 Q. Now, you speak here of the center of the Northeast of Section 15, looking south. That is looking toward surveyed land, isn't it?

A. The northeast of 15?

Q. Yes? It says center of N. E. ¼ of Section 15. I don't know what that means.

A. That would be on unsurveyed land.

Q. Well, there is a part of 15 surveyed, isn't it?

A. A small corner—the Southeast corner.

Q. You say here is a tree 11.3'. You don't say what kinf of a tree it is?

A. It should show the kind of tree. I always called off what kind of a tree it was.

Q. You don't know what kind of a tree that was?

A. No, sir. I called them off at the time I measured them.

Q. You speak of a cypress 9.8'. Was that a live or dead cypress?

A. I guess it was a green one. I don't know.

Q. Did you find many in there that big?

A. Oh, yes, sir. In circumference you know, that is not a big tree.

Q. Well, it is 3' in diameter?

A. There are lots of them that big.

Q. Lots in the unsurveyed land that big?

A. Yes, sir.

Q. What do you mean by lots of them. Would the unsurveyed land run 5000' to the acre?

A. No, sir, but you know there are 5,000 acres unsurveyed.

Q. Of course, if you would get them altogether and herd them up you would get that many, but they are scattering, ar-n't they?

169 A. Yes, sir; they are scattering, but there are plenty of them that big in there.

Q. Now, you say here fractional corner between 15 & 16—12-7 on meander line a cottonwood 11'. Is that on surveyed or unsurveyed land?

Q. That is the one that had the figures on it.

Q. I don't know, it doesn't say here.

A. Well, I think that is the cottonwood that has the figures in it, and it is on surveyed land.

Q. Now you speak here of the southwest corner of the north ½ Northeast 15-7. Is that on surveyed or unsurveyed land?

A. Of 15?

Q. Yes. The southwest corner of the North ½ Northeast?

A. That is on unsurveyed land.

Q. Did you run the subdivision lines of this section?

A. No, sir.

Q. Did anybody do it in your party?

A. No, sir. They did not run them.

Q. The outside section lines on the unsurveyed lands are the only lines run by Mr. Calhoun or anybody in your party?

A. Yes, sir.

Q. Did Mr. Anthony run the subdivision lines of the sections?

A. No, sir. Do you want to know how I got there?

Q. No, I don't care anything about that.

A. Well, I run a line and stepped it.

Q. Well, you say here that on the meander line between 14 and 23, a fractional corner, you found a sweet gum 7' in circumference, and that there is a bark mark visible in it?

A. Yes, sir.

Q. What do you mean by a bark mark?

170 A. You see when they make a survey they remove the bark.

Q. Whose mark is it?

A. It is the Government's mark.

Q. You understand that to be a mark of the original survey?

A. Yes, sir; that is a mark of the original survey. In some places they remove the bark and put it on the naked wood, and in some places they just put it on the bark.

Q. Now you say there is a cottonwood 14′ in circumference 50′ east of this corner?

A. Well, I didn't measure the exact distance—Something like that.

Q. That cottonwood tree stands on a little donick, doesn't it?

A. I don't know. It stands out in the low land.

Q. I know, but do you know whether it stands on a donick or not?

A. No, I don't.

Q. Well, now, at that point you showed me right east of these low lands there is high land and very large timber and much of it. Now, that is a kind of ridge, isn't it?

A. It is high land but it don't seem to be connected with these other high lands. We crossed the Bar Camp Slough there. Yes, that is where we crossed the slough.

Q. Yes, I see; that is high land—a ridge, isn't it?

A. Yes, it is a ridge, but I can't say whether it is connected down south of there or not.

Q. How much of a ridge is it?

A. It is a right smart ridge. Quite a batch of ground in there.

Q. Now, at the corner of Sections 12 and 14 and 23 and 24 you took a picture?

A. At 13 and 14, yes, sir.

Q. You say you measured a cypress 14′ in circumference.

171 Was *was* it a dead one or a live one?

A. I think it is a live one.

Q. Was it lying down or standing up?

A. Standing up.

Q. Now, recurring to the general conditions prevailing in the St. Francis Basin. Have you had any acquaintance with the country known as Big Lake?

A. Yes, sir.

Q. State whether or not that has filled up perceptibly within your memory?

A. You know I didn't go on Big Lake near as early as I did the other places. I wasn't at Big Lake to amount to anything at all until the railroad was built there (except going up there steamboating). Six or seven years ago I guess.

Q. When was the first time you were through Barr Camp Lake in a boat or dug out, or did you ever?

A. I never did go through it in a boat. I have always been able to ride or walk when I went through it. I have gone through the chute repeatedly, but not through the scatters or through Barr Camp.

Q. Well, now, you know the country known as Big Lake is a part of the sunk lands, is it not?

A. Sure, yes, sir.

Q. And the sunk lands of the St. Francis River, Barr Camp Lake are all known as sunk lands and are supposed to be land which sunk in the earthquake of 1811?

A. That is what they say.

Q. That is tradition anyhow?

Q. My idea is they didn't all sink then. Some of that country is a great deal older than the other. You take Swift Point
172 overflow, it is a great deal older than the other—that is, the sinking is older.

Q. Where is that?

A. It is southwest of Big Lake. The Chicago Mill owns it; that is, they own part of it and Chapman & Dewey own part of it.

Q. How big a place is it?

A. What, the section——

Q. No, I am talking about the point you are speaking of—the overflow?

A. About four or five thousand acres.

Q. You think that is older than the others?

A. Yes, sir, that is the oldest that I have surveyed in.

Q. What do you mean by that? Do you mean that in your opinion this country sunk earlier than the others?

A. It sunk earlier than the St. Francis I know. Everything goes to show it.

Q. What goes to show it?

A. Well, it is all sectionized. It is a sectionized country, and the trees——

Q. Well, is that all that goes to show that it is older, the fact that it is sectionized?

A. No, the timber is bigger, most of it.

Q. Bigger there than on the other sunk lands?

A. Yes, sir.

Q. Well, Big Lake and these other places we speak of, the St. Francis Lake, is there any difference between them and other lakes that you find in the bottom?

A. Of course there is.

Q. Well, what is it?

A. Well, in the lakes over there you will find trees, and
173 these lakes over near the Mississippi haven't a tree in them hardly.

Q. Well, as to size, the St. Francis is the largest of all, isn't it?

A. I don't know; Big Lake is pretty good size.

Q. Well, as to the matter of going dry, they all go dry, don't they?

A. Yes, in dry seasons they all go dry so that you can walk across them except in holes.

Q. Well, that is true as to Big Lake and all of them in this sunk country?

A. Yes, sir.

Q. Is there any material difference between other lakes in the

bottom and these sunk lands that we call lakes except that the timber is in the sunk lands?

A. Well, these other lakes, some of them, are caused by bends in the river——

Q. I am not talking about origin. They go dry too, don't they?

A. I know some of them do.

Q. As to going dry, and the exposure of the submerged land, do you know of any essential difference between the sunk lands and any other lakes?

A. The sunk lands are usually more sandy than the others.

Q. I speak of the duration of the wet condition of them? How long does the water stay on them? Does it stay on them all about alike?

A. I don't know.

Q. Well, what is your observation? You have seen a great deal of the country?

A. I never paid any attention to that part of it.

Q. Well, isn't it true that when one goes dry they all go
174 dry except in holes?

A. I never noticed it. There is holes in all of them that don't go dry at all.

Q. Well, the same conditions apply to them all in that respect, don't they?

A. I never thought about them in that way. I would have to think about that to tell you.

Q. Well, I want you to think about it, Sam. You know you have seen all of them go dry more or less, and most all of them have holes in them?

A. Now, some don't have any holes, and don't have any water. There is one lake they call John's Lake. I have saw no water in it at all. I have walked across it when there was no water in it six or seven years ago.

Q. Well, now in this last survey that you participated in on Barr Camp Lake you saw a good deal of that lake and went over it pretty thoroughly?

A. Yes, sir.

Q. Well, how many acres are there in it?

A. I wasn't there as much as the rest of them.

Q. Well, you say you have been familiar with this lake for thirty-five years, and you have undertaken to tell Judge Norton the difference in conditions in the Right Hand Chute of Little River. Now, I want you to tell me as to the condition of Barr Camp Lake?

A. I don't know.

Q. How many acres are there in the lake?

A. I don't know.

Q. What proportion is water and what proportion is timber?

A. There was very little timber when I was there.

175 Q. Well, what proportion is flag opening and what proportion timber?

A. Well, I don't know.

Q. Well, what proportion was timber and what proportion flag opening thirty-five years ago?

A. Well, about the same as it is now.

Q. Well, what proportion is timber and what proportion flag opening now?

A. I don't see any difference.

Q. Now we can't get any satisfaction out of that. I want you to state what proportion of this lake is timber and what proportion flag opening?

A. I don't know.

Q. When you say there is no difference in the condition of this lake now and thirty-five years ago you mean the same as when you say you cannot see any difference in a tree now and thirty-five years ago, don't you?

A. Yes, on some trees I can and on some I can't.

Q. That is the same as you mean in this—You can't see any material difference now and thirty-five years ago?

A. Not any material difference?

Q. You arrive at that calculation in the same way you arrive at your conclusion about the tree, don't you—that you can't see it?

A. I didn't notice any particular difference in it at all.

Q. I didn't ask you that. I asked you if you arrived at your conclusion in the same way you did as to the tree?

A. No, I can't see any difference.

Q. You have stated that too, but I am asking you if you
176 came to your conclusion the same way you did about the tree, and you mean you can't see it?

A. I can't see any material difference. Of course, there is some difference in the size of a tree in thirty-five years, and in the size of an opening.

Q. There is bound to be considerable difference in the size of trees in thirty-five years?

A. Yes, there is bound to be some.

Q. Taking into consideration the conditions that have surrounded this Barr Camp Lake, isn't it your judgment that there had been a considerable change from time to time in the size of this flag opening?

A. Well; I would think so, but I don't know.

Q. Now, I don't know whether you fully stated in your deposition what this Barr Camp Run is. I wish you would tell us what it is?

A. Well, it looks something like a small creek that runs down through the country there and runs into Little River.

Q. It is very narrow, isn't it?

A. Well, it is a pretty good little creek. I don't know about how wide.

Q. Well, about how wide?

A. I didn't notice.

Q. Well, you can tell Mr. Norton how wide Little River is, why can't you tell me how wide Barr Camp Run is?

A. Well, I should say 50 or 75 feet.

Q. There are two of them. Are they both the same size?
A. No, the one east is the largest.
Q. How large is Little Barr Camp Run?
A. About forty or fifty feet.
177 Q. Does the meander line follow these runs or cross them?
A. No, it doesn't follow. It crosses them.

Redirect examination.

By Judge NORTON:

Q. Mr. Sage, when you come to a Government tree it is frequently on the meander line, isn't it?
A. Well, it is near. You know when you are on the meander line Government trees are usually near there.
Q. Well, if a section line comes against what they call a meander line don't they put a Government tree there?
A. Yes.
Q. Well, they have what they call a bearing tree?
A. Yes, sir. A bearing tree.
Q. Well, would they ever use a tree that would be on the outside of the meander line, on the unsurveyed land?
A. They might, but I never saw it.
Q. You said something about a sediment from the Mississippi water. Well, when that country is overflowed by the Mississippi the sections went under as well as the unsurveyed part?
A. Yes, sir.
Q. Well, then, the sediment would settle on the sections just as much as on the unsurveyed land, would it not?
A. Yes, sir.
Q. Well, you say something about it being wetter of late years. I want to know why that is the case, in your opinion?
A. Well, I suppose more rain.
Q. You said something about ditches in Missouri?
A. Yes, sir, they run all the time.
Q. Is that the outlet for these ditches?
178 A. Yes, sir, they come down the Little River and the Chute.
Q. Mr. Sage, do these flag openings ever burn?
A. Yes, sir.
Q. Burn off?
A. Yes, sir. I have saw them burn.
Q. You said something about trees out in a quarter section, and then you said you made no subdivision lines. Was any stepping done by your party?
A. Yes, sir, I done the stepping.
Q. You done the stepping?
A. Yes, sir.
Q. I wish you would look at your map and show where you stepped?
A. I stepped in several places; I stepped in different places. I have done that frequently on lines and showing timber lands.

Q. Then you can approximate where a tree is by steps from any one point?

A. Yes, sir, pretty close. I have found a number of corners that way.

Q. What was done by your party in the inspection of these unsurveyed sections?

A. Yes, sir, when we went into the interior and didn't know where we were going we took bearings and stepped it off.

Q. Do you know what map that is in your hands?

A. It is Calhoun's map.

Q. He is the Calhoun that was with you?

A. Yes, sir.

Q. Has it got a date on it? Oh, well, if you don't see any it doesn't make any difference.

A. I don't see it—yes, here it is, October, November and December, 1907.

179 Q. Do you find anything on there that represents the flag openings on 12 and 13?

A. Yes, sir; over in 12 and 13 it has got something marked "Bar Camp Opening, or Flag Lake."

Q. Well, from your knowledge of that locality does that correctly represent it, approximately?

A. Yes, sir, there is a flag opening right in there.

Q. Well, assuming that this is correct, about what would be the area of that opening according to that map?

A. I can't tell you the area of that opening.

Q. Well, look at the map and state as near as you can. You can see about how much it covers?

A. Well, to look at the map and look at the opening it looks to me like the opening is bigger than——

Q. Well, put your judgment and the map together then and tell us.

A. I don't know how big it is, Judge.

Q. About how big would it be from the map?

A. I don't see that he has got it marked here. That opening that he has got marked off here would hardly be a section.

Q. There has been something said in this testimony, Mr. Sage, about Bar Camp Lake. Do you know of this Bar Camp Lake, or is it Bar Camp Run?

A. They call it Bar Camp Overflow—the people that live there all the time.

Q. You say there is a big one and a little one?

A. Yes, sir; the creeks that run out from there to the river.

Q. Well, that is what is meant by Bar Camp Run—you mean the streams that empty it?

A. I suppose they do. The- call that Bar Camp Run.

180 Yes, I suppose they do.

Q. Well, you know where these streams are?

A. Yes, sir.

Q. Some pictures were taken by your party when they were in there?

A. Yes, sir.
Q. Did you take some near that flag opening?
A. We took one right in the flag opening, looking North.
Q. Looking North?
A. Yes.
Q. Did you cross that flag opening?
A. Yes, sir, going west.
Q. Well, how far did you go west?
A. Well, we went over nearly to the chute.
Q. Didn't you go entirely to the chute?
A. Not right straight west; we turned to the Southwest and went to the chute.
Q. Now, what kind of timber did you find between the west side of the flag opening and the chute?
A. We found some good timber.
Q. What kind of land?
Q. Kind of low land, with some cypress, willow, some ash and other timber.
Q. In that area, as we call it, where did you find the highest ground?
A. The highest ground was immediately east of the fractional corner of 14 and 23—right across east of there (indicating on the map).
Q. What kind of timber was on it?
A. Oh, there was gum, one walnut, maybe more, one or
181 two black walnut, sweet gum and cottonwood. I think there was one or two walnuts. There was some high land right along the chute up there in 15—some pretty high land.
Q. What sort of timber did it have on it?
A. Gum, and I believe, cottonwood.
Q. Some of that described in your notes—some of that timber measured?
A. Yes, sir, and a picture made.

By Mr. ROLESON:

Q. Mr. Sage, going west from the west side of that flag opening there, you say it is a timber country?
A. Most of it is timber, where we went west.
Q. Was there any lake or anything in there at all?
A. I don't know—I don't remember seeing any lake in there. There wasn't any water.
Q. Was there anything but woods?
A. I don't remember crossing anything but woods, no sir.

Recross-examination.

By Judge HUGHES:

Q. You speak of a flag opening burning off—Did you ever see this one burn off?
A. No, sir.
Q. Ever see any of them in Bar Camp Lake?

A. No, sir.
Q. After it had burned?
A. Never been in there after a fire. Saw it burn in St. Francis—Also Big Lake.
182 Q. Never saw it burn here at all?
A. No, sir; I saw one burn in Tyronza Lake.
Q. Now, you speak of certain land being the highest land—Out from what place?
A. Right across Bar Camp Run from the meander line corner of 14 and 23, it looked to me like the highest land I saw.
Q. Did you judge the heighth by your eyes, or did you take a level?
A. By my eyes. I never took any level, nor never saw anybody take a level in there.

—— ——.

Sworn to before me this 29th day of January, 1908.
[SEAL.] JOS. M. CONNABLE,
Notary Public.
My Commission expires Oct. 13th, 1909.

183 *Exhibit to Deposition of S. A. Sage.*

NOVEMBER 6TH, 1907.

Plate No-. 5 & 6.
Drnl. Corner between Sec-. 15 & 22-12-7 On Maple Tree 7.2 ft.
Plate 7 & 8.
Frnl. Corner on meander line between Sec-. 14 & 15-12-7 North On Cypress tree 3.2 Ft. Dead.
Witness tree Cypress 4.7 Ft.
Looking South at above corner.
Center of N. E. ¼ of Sec. 15-12-7.
Looking N. E. Sunk Lands—Tree 11.3 ft.
Cottonwood 11.3 ft.
" 11 "
Cypress 9.8 " 4.5 ft. from ground, holds size well.
S. W. Corner of N. ½ of N. E. ¼ Sec. 15—12—7.
Looking east Cottonwood 12.2 ft.
Frnl. Corner between Sec. 15 & 16 T. 12. N. R. 7 E. on meander line—
Cottonwood tree 11.0 ft.
Looking South east.
Frnl. Corner on meander line between Sec. 14 & 23—12—7 looking North East.
Sweet gum witness tree 7 feet in circumference. Original is Bark Mark and visible.
Cottonwood 14 feet in circumference 50 feet East of this corner on Sunk Lands. About 50 feet E. of this tree there is a strip of lower land running about N. & S. and about 50 feet wide. In this low place we saw a cottonwood about 3½ feet in diameter—many

large cypress—one 11 feet in circumference. Immediately on East of this low land is high lands—with very large timber and much of it.

Measured here:

1 Cottonwood	11.7/10	feet in cir.
1 Gum	9.4/10	" " "
1 Elm	7.5/10	" " "
Black Walnut	4.5/10	" " "
Cottonwood	11.3/10	" " "
Gum	13	" " "

All above trees within 250 feet of each other and a great deal of other timber equally as fine all around.

Corner of Secs. 13-14-23 & 24-12 N. 7 E. Took picture looking N. W.

About ¼ mile N. W. of this point measured cypress 14 ft. in Cir. Much other large timber there, such as cypress and large Maple.

Laying on surveyed land near this corner lays an old Oak log on surface about 2 ft. diameter—sap all rotted—supposed to fallen in Earth-quake.

184 At Frnl. Corner of Secs. 12 & 13 on meander line—took picture looking N. W. toward unsurveyed land about 50 ft. W. of line—measured Cottonwood 14.2/10 ft. Cottonwood 100 feet West of line 14.2/10 ft. Cypress about 110 feet west of line 9.2/10 ft. Ash 200 ft. West of line 9 ft. in circumference. Cottonwood 300 feet West of line 12 ft. 3/10.

Still large cottonwood, ash and cypress west of here. In flag opening about quarter corner on South line of Sec. 12-7 took pictures. Measured cypress—13 ft. just about water line—others near as large or larger.

S. W. Corner Sec. 12-12-7 took picture looking Northeast.

Measured:

1 Cottonwood 14 ft. 2/10.
1 Sycamore 5 ft. 6/10.
1 Cottonwood 13 ft. 1/10.
1 sweet gum 4.8/10.
1 cottonwood 11 ft.
1 Ash 8 ft.
1 Elm 6 ft.
1 Elm 5.5/10.

All above on less than ½ acre—same kind of timber all around.

S. E. Corner Sec. 11-12-7 took pictures. Measured:

1 Cottonwood 10 ft. 3/10 Cir.
1 Cypress, 8 Cir.
1 Cottonwood 9.9/10 Cir.
1 Cottonwood 13, 5/10 Cir.
1 Maple 11 ft.

Other very large timber near. Notably one very large Cottonwood with trunk about 7- ft. to first limb.

S. E. Corner Sec. 10-12-7 took picture sitting on roots of Cottonwood 12 ft. in Cir.
1 Maple about 2 ft. in diameter.
Very large Cypress and other timber.
In S. W. ¼ N. W. ¼ 15-12-7 took picture. Measured:
1 Gum 10 ft.
1 Pin Oak 7.4/10
1 Red Oak 7.5/10
1 S. Gum 9
1 S. Gum 8.6/10
1 Elm 8.5/10
1 Gum 8.1/10
1 S. Gum 8.5/10
1 S. Gum 8.8/10
1 Ash 5 ft.
S. Gum 10.3/10
1 Maple 9
1 Gum 13.5/10
1 Pin Oak 8.8/10
1 S. Gum 10.8;10
1 Cottonwood 13, 7/10
1 Sycamore, 11

185 This was right near the old log camp of Chapman & Dewey. A very large number of cottonwood stumps show where much timber has been cut.

All above trees on about one acre. A great many other fine trees were on the same acre. There is a large scope of country adjoining this place all covered with just such timber, except what has been cut.

186 *Deposition of G. W. Calhoun.*

G. W. Calhoun, being first duly sworn, deposes and says:

By Mr. Roleson:

Q. Mr. Calhoun, what is your age?
A. 21.
Q. Where do you live?
A. 12 Stratton Ave.
Q. What is your occupation?
A. Civil Engineer.
Q. Did you make a map and survey of the unsurveyed land in township 12-7?
A. Yes, sir, I run a meander line.
Q. Did you make a map of it?
A. Yes, sir.
Q. Have you one there now?
A. Yes, sir.
Q. I will ask you to file that as an exhibit to your deposition?
A. I do so.

(Map filed—marked Exhibit "A.")

Q. Is that map correct, Mr. Calhoun?
A. Yes, sir.
Q. Is the space that you have there as Bar Camp Opening or Flag Lake, correct?
A. Approximately correct.
Q. Who was with you at the time?
A. Winston, the Leve- Board engineer, was with me there three or four days.
Q. Were you running the level at the time?
A. No, sir.
187 Q. Well, did Winston run the level while you were over there?
A. Yes, sir.
Q. Were you with him during the running of that level?
A. Yes, sir.

Cross-examination.

By Judge HUGHES:

Q. You say you live in the city of Memphis, Mr. Calhoun?
A. Yes, sir.
Q. How old are you?
A. 21.
Q. How long have you been a surveyor?
A. 8 years.
Q. What employment are you in. For whom do you work?
A. I work for various parties.
Q. Are you in the employ of the Levee Board?
A. No, sir.
Q. Were you employed by the Levee Board to make this survey?
A. I was employed by Ritter when I first went over there, and did this work for the Levee Board.
Q. Now, the place which you show here, Bar Camp Opening or Flag Lake, did you actually meander that out?
A. No, sir.
Q. You simply approximated the size of it here?
A. I crossed it in different places.
Q. Did you see any other flag opening on this unsurveyed land?
A. Yes, sir.
Q. Did you put them down?
A. There is one shown on there.
Q. Where is it?
188 A. Over in Sec. 19.
Q. Sec. 19?
A. Yes, sir.
Q. This is wholly out of the region of what we know as Bar Camp Lake?
A. Yes, sir.
Q. It is out of what is known as the Sunk Lands of Little River Right Hand Chute, isn't it?
A. No, sir; it is not.

Q. Well, it is within a half mile of the sunk lands of the St. Francis River?
A. I don't think so.
Q. Well, here, look at the map—isn't it?
A. Yes, sir.
Q. What particular part of this surveying did you do?
A. I run most of the meander lines and some of the section lines.
Q. Who gave you your instructions about how to do this?
A. No one.
Q. You just went over there and run it as you thought best, did you?
A. Yes, sir.
Q. And you didn't find any flag opening except the one you have marked here in 12 and 13, did you?
A. I found flag scattering among the timber.
Q. You found flag openings through this country?
A. Well, you couldn't call them openings, but there was flag scattered among the timber.
Q. You didn't put them down on your map?
A. No, sir.

189 Redirect examination.

By Mr. ROLESON:

Q. There were not any flag openings of any extent except that one?
A. No, sir.
Q. Is there any flag openings except the ones that have elbow brush and timber in them of any size?
A. Well, the large opening there had no brush in it.
Q. I mean except the large one?
A. No, there was no opening that did not have brush and timber.

Recross-examination.

By Judge HUGHES:

Q. When you speak of timber what do you mean?
A. I mean small cypress timber.
Q. You didn't put that down?
A. No, sir.

By Mr. ROLESON:

Q. About how much would these flag openings be?
A. Four or five acres scattered flag among the timber—Probably some a little larger.
Q. How many do you remember?
A. I can't count them, there were a great many of them; a lot of small ones.

By Judge HUGHES:

Q. But you testified now that four or five acres is the biggest one you haven't put down there?

A. I said some of them possibly were a little larger.
190 Q. What is the largest one you haven't put down here?
A. I never noticed them particularly.
Q. You don't know how big this one is *is* (referring to map)?
A. No, in fact I didn't run the lines. Those among the timber could not be called openings.
Q. Well, would you say that 4 or 5 acres is as large a tract of that kind as there is in this body of land?
A. I don't know that I would, no.
Q. Well, I want you to say. You told Mr. Roleson that four or five acres was the size. Now, I want you to say what the size is?
A. I think four or five acres will cover it.

——— ———.

Sworn to before me this 29th day of January, 1908.
[SEAL.] JOS. M. CONNABLE,
Notary Public.
My Commission expires Oct. 13th, 1909.

191 *Deposition of Wm. H. Collins.*

WM. H. COLLINS, being first duly sworn, deposes and says:

Direct examination.

By Judge HUGHES:

Q. What are your initials, Mr. Collins?
A. Wm. H. Collins.
Q. Where do you reside?
A. Memphis.
Q. What is your occupation?
A. Civil Engineer.
Q. What education and experience have you had in engineering work?
A. I have had an education at Georgetown College and an experience of about 28 years.
Q. During that period what character of work have you been engaged on?
A. Well, it has been miscelleneous work—services of different kinds for railroads, land, and work of mighty nearly every character.
Q. Did you assist in making a survey of Township 12-7 in Poinsett County?
A. Yes.
Q. Under whose supervision was the survey made?
A. Under Mr. J. A. Omberg, Jr.
Q. What part did you take in the work?
A. Had charge of field work under his direction.
Q. Did you make a map of that township which shows the survey which you made?
A. Well, I made a map of that part of the township covering sunk land in Township 12.

Q. Have you that map with you?

192 A. Yes, sir.

Q. I will ask you to file that map as an exhibit with your deposition?

(Map filed—marked Exhibit "A".)

A. I do so.

Q. Did you also make field notes showing the actual work which you did on the ground?

A. Yes, you have a copy of the field notes?

Q. Is this a copy of the field notes?

A. Yes, sir.

Q. I will ask you to make that an exhibit to your deposition, and let it be marked Exhibit "B"?

A. I do so.

Q. Now, the field notes reflect your actions and show just what you did in making this survey, do they not?

A. They show the work as it was actually done. It is a record of the work.

Q. Is this map a correct picture and reflection of the work you did?

A. That map is a correct representation of the work, yes, except that west meander line, I didn't run that; that is the one west of the slough, but it is platted on from the Government notes.

Q. That is the one west of the chute?

A. Yes, the one west of the Right Hand Chute.

Q. I see upon this map a series of figures in different directions across the sunk lands—what do they represent?

A. They represent the levels as taken by Mr. Harkness.

Q. You didn't run the levels?

A. No.

Q. I see certain pointed spaces are designated here on this map—what are they intended to represent?

193 A. They are intended to represent the location of the flag.

Q. Now, state what you found in the way of flag openings upon this land?

A. I found practically what is represented there on the map; that is, part of them were sketched in, but on all those flag openings as shown there there were at least two measurements taken—one right straight across, and the rest of it sketched in.

Q. You actually measured these others?

A. The larger ones, yes, sir, and on the smaller ones covering 6 or 8 acres they were sketched from a distance of about 1000 feet, maybe, but they were sketched in.

Q. I see here you represent a small flag opening in the east part of section 12 and extending down through 13 and 14. Is that the flag opening which Mr. Calhoun undertakes to represent upon his map?

A. I think that is the main flag opening which has been mentioned by both Mr. Calhoun and Mr. Sage; that is the one by which the

water which goes into Bar Camp Slough comes down from the North; comes all the way down that opening.

Q. I see you represent upon your map another flag opening directly west of that to some extent. Is there such a flag opening?

A. There is a flag opening there.

Q. What is the size of it?

A. Well, about the size as represented on the map.

Q. Examine the map and state about the width and length of it?

A. Well, let's see (examining map) I will just guess at it; I haven't got a scale. The width is something like 1200′ or 1300′, and the length is 5000′ or 6000′, but the main flag opening that lies east of that, that is the one shown on Mr. Calhoun's map, that is probably 11,000′ long; that is through the sunk lands; it
194 extends further north.

Q. Now, in this flag opening what grows—what kind of vegetation grows?

A. Mostly flag. It is a tall grass, probably about 5½ or 6 feet tall.

Q. Is there some timber growing in the flag.

A. Well, in some instances, but not in the main opening.

Q. Is there any indication at the northern end of the sunk land of a change in the channel of the right hand chute?

A. There is an apparent indication of a change in the location of the chute owing to the fact that the meander, after going practically half the distance up through Sec. 1 would cross about the point where the chute is shown to end on the map.

Q. Now, what effect, if any, would that have with reference to the flag opening which appears on the surveyed land in section 12?

A. I don't understand the question.

Q. What I mean to ask you is, whether or not a change in the channel as you have indicated would result in throwing the water out on the surveyed land?

A. Yes, it would have a tendency, in all probability, to throw it out on the surveyed land. In time of overflow, with that big bend in there, it would throw it on the surveyed land.

Q. You followed in making this survey the field notes of the United States Surveyors?

A. Yes, sir.

Q. The original field notes?

A. Yes, sir.

Q. Did you find some Government corners?

A. Yes sir.

Q. Can you mention some of them upon examination of the map.

195 A. Yes, sir; I find a Government corner, fractional corner of sections 15 and 16, which was a cottonwood. I find a Government meander corner fractional 15-22 which was a maple, rather old and decayed. That is two; one fractional 15-16, the other 15-22. Then I found the corner of fractional 14-15, and corner of 14, 15, 22 and 23, and then the next Government corner I found was corner at the southeast of Section 13; that is the corner of 13

and 24 in Township 12, Range 7 East, and up on the Range line about 3600 or 3900' I found a fore and aft tree that had been cut into. I think it is shown in the field notes there; I think it was a gum. So that makes five Government corners that I found there.

Q. Did you see a line there that was known as the Anthony line?

A. Yes, sir.

Q. Does that coincide with the surveys made by you and Mr. Calhoun?

A. I think that Mr. Calhoun used the corners and I used them after he had used them. I think the corners that we both used lay about 100' approximately south of the Anthony corners.

Q. What justification or explanation can you offer, if any, of this meander line being run through the timber as now appears?

A. Well, I think at this late date it would be hard to give any explanation of it other than one's own opinion. My idea is that at the time the original survey was made there was some condition that obstructed and held the waters up on that line. They unquestionably had some cause for meandering the sunk lands, but there is a general tendency of sloping toward the sunk land; there is no indication why that survey should have been stopped where it was except at the time of that survey there was a great deal more water there than at present, and besides at the time we left there I think it would be safe to say that at least 65% of the area of sunk lands was
196 covered with water. That was about the 6th or 7th of December.

Q. What time did you go in there?

A. I think we went in there about the 7th of November.

Q. And you staid there until when?

A. Until about the 6th or 7th, or maybe the 9th of December.

Q. Did you have a camp up there?

A. Yes, sir, had a camp.

Q. Did you make any effort to note the character of the timber growing up there?

A. No, I didn't.

Q. I ask you to explain the map of the surrounding country there. The map which you now have purports to represent Mississippi County and a part of Poinsett County surrounding the territory in question. Do you see a stream on there called the right Hand Chute.

A. Yes, sir.

Q. And another stream called Little River?

A. Yes, sir.

Q. Which is the longer of the two?

A. Little River is the longer of the two, I think.

Q. They both are outlets of Big Lake, and run out of Big Lake?

A. Yes, sir.

Q. Do you know how they compare in size?

A. Well, no, except from driving through the country; I noticed there was much less water running through Little River than through the right hand chute.

Q. Which is the more tortuous and winding of the two?

A. I think Little River is the most tortuous and winding.

Q. In making this survey did you notice any timber partially covered with soil?

A. Partially covered with soil.

197 Q. Any logs partially buried?

A. Yes, upon section- 12 and 13, I think it was. I saw some logs that were partially buried.

Q. To what extent were they covered? How deep were they buried?

A. Well, in section 12 there was a log about 22 or 23 inches in diameter that I took a stock and uncovered the earth on it about three feet ahead of where it entered the ground, and I dug down about 7 or 8″, which shows that the lower part of that log was covered two feet and eight or nine inches; that is the part I reached; I didn't reach the end. Then on 13 there were other logs of the same character buried by an accumulation of silt that had been deposited there during high water.

Q. Are these the only instances that you remember?

A. Yes, sir; these were the only two instances. On section 12 a little above the middle and on section 13 just about the middle.

Q. Were these logs on surveyed or unsurveyed land?

A. The one in 12 was about on the boundary between surveyed and unsurveyed and the one on 13 was about 1000′ out in the unsurveyed land.

Q. Now, designate as nearly as you can on your map where these logs were?

A. Well, the one on section 12 was right in the neighborhood of that mark 97.1.

Q. 97.1?

A. Yes, sir, right up in the flag.

Q. In the northeast quarter of 12?

A. Yes, sir. Then the other was very near the line between 13 and 14—near that point marked 96.8 in between the flag and the boundary line between 13 and 14.

Q. Have you, in your past experience had occasion to follow the original Government surveys on other tracts of land?

198 A. Yes, sir, in Missouri I did some surveying of lands originally surveyed by the government.

Q. Now, state whether these meander lines are exact representatives of the contour of the shore of waters, or are they simply approximations?

A. Well, on the easterly meander lines; that is, the line through the south half of section 12 and through all of section 13 there is a very marked line.

Q. What do you mean by a marked line?

A. That is a line made by the water line at one time.

Q. Then there is pretty nearly an even contour running through a part of 12 and nearly all of 13?

A. Yes, sir, running down them to the open, and then when you come out on that parcel of unsurveyed land in sections 22 and 23

there are parts of these tracts that di- not show that same marked line that is shown on 13 and through a part of 12.

Q. If these sunk lands should be filled with water the territory which you describe in 22 and 23 would be the territory to furnish the outlet for the water?

A. Yes, sir. It would go through 22 and 23, a part of it, of course, would come down the chute.

Q. Now, to recur to my question, I don't think you quite caught my meaning exactly—I asked you whether or not, as a general thing, speaking generally and without reference to this particular tract of land, whether or not these surveyors have attempted to follow every sinuosity of the shore?

A. No, sir; they cut across little points and some times leave little projections of land running out into the sunk land, and some times the surveyed land would include what one would naturally suppose should be in the unsurveyed.

199 Cross-examination.

By Judge NORTON:

Q. You meant judging from the way it looks now when you gave your last answer?

A. No, I think that is the general rule.

Q. Well, do you see anything to indicate that the general rule was not followed in making this meander line?

A. I think it was followed in making this meander line.

Q. You found flag extending north and east of the meander line in Section 12 and Section 1, did you?

A. Yes, sir.

Q. You have two principal areas here represented as covered by flag—on the map?

A. Yes, sir.

Q. Now, did you make the map?

A. I made that map, yes, sir.

Q. Well, who did the field work that resulted in the map?

A. I did the greater part of it.

Q. You did both the surveying from which it is made, and the map?

A. Yes, sir, the great bulk of it. The cross lines were run by my assistant, Mr. Davis, but all the meander lines I ran myself, and the matter of determining as to those old Government corners and verifying them and running out here to get a check of the meander, that work I did myself.

Q. Now, let us express it so that the stenographer can get it intelligently. I suppose you mean the three lines of figures, the three lines running across the sunk lands—the three lines of figures?

A. Yes, sir.

200 Q. The bottom one through 13, 14 and 15, the middle one through 12 and 11 and the top one through the top of 12 and 11?

A. Those lines were run by Mr. Davis, and the levels were run by Mr. Harkness.

Q. What is Mr. Davis' given name?
A. Thomas.
Q. You didn't run the levels?
A. No, they were all run by Mr. Harkness.
Q. Did you cross that territory yourself, approximately where these three lines of figures cross it?
A. Yes.
Q. You did?
A. Yes.
Q. Where you have a flag opening represented in southeastern corner of 11 and the west half of 12 and north half of 14, do you mean to say that this is an open area so far as timber is concerned?
A. It is open from this point on the east here to that point on the west.
Judge HUGHES: Refer to those points on the map so that we can get it in the record.
WITNESS: It is open from a point on the line between the south of 11 and 12 from 97.8 to 97.1.
Q. You say it is open land?
A. Well, there is a little scattered timber there but it is all flag.
Q. A little scattered timber?
A. Yes, sir.
Q. What kind of timber?
A. It is mostly scrub timber, as my recollection goes.
Q. Is it gum, ash, cottonwood, or what?
201 A. There is some cypress; a very little of it; just a few cypress trees in there.
Q. Is there any ash in there—that is, the cross line from 97.8 to 97.1?
A. That can best be explained by reading from the field notes for that particular line. Suppose I read the field notes applying to that line.
Q. Well, first do I understand you to say that you went through there yourself?
A. Yes, sir.
Q. All right, read your notes?
A. Well at "O"—that is the beginning at the chute in timber.
Q. At what point?
A. On the west side of 11.
Q. Then what was your direction?
A. Wait awhile—wait a while. This is it. At 1000 in timber; at 2000 left timber and went into flag and thorn; beginning at the chute—at the meander down the chute.
Q. On the west side of 11?
A. On the west side, yes.

1000′ In timber;
2000′ Left timber and enter flag and thorn. Flag bears north 10 W. & S. 15 E. Flag 100′ wide, timber extends to 3200′.
3300′ Edge of flag. Flag bears S. 10 W. 3640′ & N. 15 E. 2000′.
4000′ Still in flag and scattering timber.
5000′ Open flag bears S. W. and N. E., N. 1320′ and S. 1000′.

5825′ Leave flag—bears S. W. & N. E.
5900′ Enter timber.
7000′ Enter flag—bears N. E. & S. W.
8000′ In big flag extending N. about 2 miles and S. about 1 mile.
9000′ In flag.
9200′ Leave flag and enter timber.
9700′ To corner of fractional secs. 12 & 13.

Q. Now, you said something here (indicating on map) about flag—how wide is it?

202 A. About 1200′.

Q. I thought you said 100′. Now, then, you mean to say that from the west line of 12 on to the chute there would be an area in there that would be sparcely covered with timber and very much covered with flag?

A. Very much covered with flag, yes, sir.

Q. What means did you have of knowing the length of that body of flag in a northeasterly and southwesterly direction?

A. By guess, sir.

Q. All by guess?

A. Yes, sir. Except this main flag here we measured on the north cross line, on the middle cross line and on the south cross line, and then it was measured on a line northwest from this corner down here (indicating on the map)—The corner common to 13 and 14 and 23 and 24.

Q. What you have here (indicating on map)—the body south of that, was only crossed one time?

A. Yes, sir; except down here we struck a little end of it.

Q. Were you down there where the lower line crosses it?

A. Yes, sir.

Q. Could you see any of it north?

A. Yes, sir.

Q. That is within the area represented as flag on this map?

A. Yes, sir.

Q. Well, now within the western part of 12 and within the area represented as flag, will you say that this is not covered with timber?

A. How is that sir?

Q. I asked you if, in the eastern part of 12 and within the area represented as flag, if you would say that this is not covered with timber?

203 A. I will say that it is not covered with timber, yes, sir.

Q. Well, will *dou* say that it is covered with flag?

A. Not literally, no.

Q. Well, then will you give us the proportion of flag and the proportion of timber?

A. The flag predominates.

Q. I asked you to give us the proportion of flag and the proportion of timber?

A. I should say that the flag covered 3/8 of the total area, and scattered timber probably 2/5.

Q. Well, then w-ere this map represents flag it is not true that it is open flag?

A. Not literally so, no. This is all open flag here—(indicating on the map).

Q. That is the eastern?

A. Yes, sir, the main flag.

Q. Of the other then, partly in 14 and partly 11, and the northern end of 12, you won't say this is open flag?

A. There is quite a batch of flag there—I wouldn't say it was all flag.

Q. Still on this map you make no distinction between that which is partly timber and flag, and that which is open flag?

A. No, sir.

Q. Then, how much in the area shown to be flag, in 14, 11 and 12, how much is really open flag?

A. How is that, sir?

Q. How much of an area could you find anywhere that would be free from a tree at all?

A. I imagine you could get an area there of 40 acres or more that would be free from any tree at all.

204 Q. Now, in the southeast corner of 14 you have a representation of flag. Will you say that is open, and not covered with timber?

A. Yes, sir, the bulk of it is open flag.

Q. The bulk of it?

A. Yes, sir. Now, in regard to that I will make a little statement. This up here (indicating on map) while as I told you it is approximated, there is flag occurring there in various localities which is not down on the map at all. Now, in here, (indicating on map) I have passed through it and know there is flag over there, but I don't know that it is the exact location; that was put in there from memory, but this area shown here to be flag really is less than the total flag area in the sunk lands. While it is approximated I will safely bank on it, that the area as shown there is much less than the actual area of the flag in the sunk lands. It was not intended to exceed in one iota.

Q. Well, I will ask you if you went directly west to the chute from the southwest corner of 12, or vice versa?

A. Well, I didn't go directly east or west, but went east from this point here.

Q. Well, but that is considerably north?

A. Yes.

Judge HUGHES: Mr. Collins, you must state what points you refer to so that we can get them into the record.

WITNESS: On the middle cross line I went from the chute over to the fractional corner of 12 and 13.

Q. Except that you were north of it about ¼?

A. Yes, about ¼ north.

Q. I will ask you if you went at all on the section line between 11 and 14?

A. No, sir; because there is no section line there.

205 Q. Did you find any hugh line anywhere in that unsurveyed area?

A. Any line that you would call high, no. There was a part of the bank of the chute, with the stage of the water there about the 1st of December, that stood 5½ or 6 feet above the level of the water.

Q. Well, in the S. E. corner of 14 didn't you find a ridge of high land?

A. Yes, sir; this is high all along here. Not high in the S. E. corner of Section 14.

Mr. HUGHES: Well, state the points you are talking about. We want to get it on paper.

Q. Well, didn't you find high land in the S. E. ¼ of 14?

A. No, sir; the instant you leave the S. E. corner of 14 and go towards the northwest you get lower until you get into the chute, and then in going out north between 13 and 14 you get on low ground almost immediately after leaving the corner.

Q. How far is it, going northwest from the southeast corner of 14 until you get to the chute?

A. It must be two miles.

Q. Now, you say that along the eastern side of that unsurveyed area that the meander line practically follows some indication of a bank?

A. No, sir; I didn't put it that way.

Q. No, I didn't think so either.

A. It shows a water line because there is a gradual fall from that meander line through 13 and the south half of 12 which falls out towards the open flag.

Q. That is what I wanted to ask you. How far does that gradual decline extend?

A. It extends approximately 600′, 800′, or 1000′. You
206 get out in the flag and it is almost—well, it is virtually level.

Q. Well, is this map intended to convey the idea that there is some higher ground between the two main bodies of flag?

A. There is a little, yes, sir.

Q. It extends between the two the whole length of it?

A. Yes, sir; virtually.

Q. Then that slope you speak of doesn't cross that high ground?

A. No, sir.

Q. It stops in the first body of flag?

A. It falls towards the west to the flag and then rises from the flag to the high ground and falls again.

Q. In flag again?

A. Yes, sir, in flag again.

Q. I don't know whether you thoroughly understand my question or not when I asked you if there was some high ground in the southwest of 13 and the southeast of 14?

A. There is some in the southwest of 13 and up in the northeast of 22. In fact, that meander crosses a little ridge somewhere—yes, that is my recollection right in there (indicating on map). In fact, it cuts off this little point of land projecting out, and sometimes takes in little strips of water, and leaves out little projections of land that you would think ought to be included in the surveyed land.

Q. Now these figures you have made in the three cross lines of levels; for instance, 98.3. Please tell us what that means?

A. Well, there was a bench mark to the right near this corner—the corner common to the fractional corner of 12 and 13, and the elevations given on that map all relate to that data.

Q. Well, when 5/10 (written as .5) occurs, does that mean ½ foot?

207 A. Yes, sir.

Q. Did you say who was with you when you made these three lines of levels?

A. Well, the whole party was with me. I wasn't running the line of levels.

Q. You went with them?

A. I wasn't with them when they went across. Mr. Harkness was in charge.

Q. Who was with you when you went through?

A. I had the whole field party with the exception of the level party.

Q. Did you have a way of telling where the level party had gone?

A. Yes, because they would follow up on my work.

Q. Was the line run that you followed?

A. Oh, no.

Q. You just went through?

A. No, I run the line through there from the northeast ¼ of 11, the middle cross line,—I run the line for the figures to be taken on that line. Now, these two, the North cross line and the south cross line were run by Mr. Davis.

Q. Now, to go back to the southeast ¼ of 11, would you say that there is no ash timber in the area represented on this map as flag?

A. Oh, there might be some scattering ash. I couldn't say in regard to that.

By Mr. ROLESON:

Q. I want to know whether you went through the southeast corner of 11 on the section line due west.

A. No, I didn't.

Q. Now, then, did you establish the fact that the flag ex-

208 tended from the southeast corner of 11 back west a half mile?

A. Well, I just approximated it from this flag up here on the line a quarter above.

Q. Did you ever see the territory south of the middle line?

A. Did I ever see it? Yes, sir, sure.

Q. So, you stood on this middle level line and looked south and could tell that there was all flag extending down there for a half mile wide and something over a half mile long?

A. Yes, I felt satisfied that it extended that far.

Q. What made you feel that way?

A. Because it showed up for 2200'.

Q. You looked down and it was open for 2200'?

A. Yes, sir—some scattering timber.

Q. And you could see, from the southeast quarter of 11, looking back west, you could see a half mile back.

A. I have never been on that line.

Q. But you could stand on the level line that you run and see that the flag was a half mile long, extending from the southeast quarter of 11?

A. That was my judgment.

Q. That was your judgment?

A. Yes.

Q. I want to know whether you know it is a fact that extending from this southeast corner of 11, there is a large amount of timber, gum, cottonwood, etc., and all other kinds, and that it extends back and is heavily timbered?

A. I don't know.

Q. You made this map?

A. Yes, sir.

Q. I mean the point designated on that map as flag opening?

209 A. I have not been on that land.

Q. How could you make a flag opening if you had not been there?

A. I say I assumed it. I know it run down there 1800′ or 2200′.

Q. You don't know whether or not, on this south line of 11, extending a half mile back west from the southeast corner of 11, you don't know whether it is heavily timbered or not?

A. No.

Q. But regardless of whether you have that or not, you make a map here and show that it is flag?

A. Well, I will correct that statement. I know that it is not very heavily timbered.

Q. You state that the whole party was with you—Will you name those that were with you at the time you came to the conclusion from a view taken at this middle level line that this was flag?

A. Well, there was Tom Davis, Elbert Powell, Don Cato Step, Alex Staler—I believe that is all that were with me.

Q. On this middle level line, where it runs across this western strip of flag, how wide an opening will you say you crossed in which there was no timber but all flag?

A. Well, let's see now. We will get at that by scale. At 3300′ still in flag and scattered timber. At 4000′ there is scattered timber, as shown in through here, and at 5000′ open flag still. 5800′ left flag.

Q. Now, would that mean that there is 800′ in here that is open in which there is no timber?

A. Yes, sir. Virtually 800′ in here on the east side of this flag.

Q. You say there is 800′ of open flag in there in which there is no timber?

A. Virtually so, yes, sir.

210 Q. What do you mean by virtually no timber?

A. Oh, there might have been a scattering thorn locust, but nothing of any real value.

Q. Well, what size was it, do you remember?

A. I really don't know.

Q. You were not particular about noticing timber—you were noticing flag?

A. Well, I noticed the flag because I had to go through it. I didn't have any instructions to get the timber.

Q. You were instructed to get the flag and not pay any attention to the timber?

A. No.

Q. How did it happen then?

A. It was my intention to take all that topography and take all the timber, but I left before I got through with the work.

Q. That is the reason you can tell *is* about the flag and can't tell us about the timber?

A. I noted the flag as I went through.

Q. Why didn't you note the timber as you went through?

A. Because on a good deal of that work I didn't contemplate that my going over it the first time would settle the matter. I contemplated going over it two or three times.

Q. So, you made one trip to look at the timber?

A. Yes, sir. But I didn't get back.

Q. In whose employment were you when you made these levels?

A. I was employed by Mr. Omberg.

Q. You don't know whether he was employed by Chapman & Dewey or not?

A. He may probably have worked for Chapman & Dewey.

211 Redirect examination.

By Judge HUGHES:

Q. Mr. Roleson asked you if you took a note of the timber. I see on your field notes you show when you struck timber?

A. Those notes were made by Mr. Davis. On these cross lines Mr. Davis run all of these.

Q. Are you a man who has had any experience with marketable timbers—ever deal in timbers?

A. No, sir.

Q. Now, your map represents certain sectional lines in the unsurveyed lands—Do you mean for this map to represent that you have run these lines across?

A. Oh, no, they are just put in there to complete the map so as to show where these sections would be if it were sectionized.

Recross-examination.

By Mr. ROLESON:

Q. I show you a picture indicating that it was taken at the southeast corner of section 11-12-7. Would you tell me whether or not you know that there is such timber as that at that point?

A. Well, I don't think that it is there, but I haven't been there.
Q. You don't know what kind of timber is down that line there?
A. No.

By Judge NORTON:

Q. If I understood you correctly, when you found the Government corners they had been previously located by Mr. Calhoun, generally, or all the time, how about it?

A. All of them had been located by Mr. Calhoun, unless
212 it was the southeast corner of 13, and I think Mr. Calhoun located that. That was witnessed by a gum that had been cut out, and it showed a plain marking face but the marks were not there. I accepted t-at same corner and run my line north on the east line of 12 and 13 from the corner.

Q. You didn't find the actual figures in the tree?
A. No, but I feel satisfied and the matter was proven by running across that fore and aft tree.
Q. You testified to having found some logs partially buried, what kind of wood was it?
A. I think it was cypress.
Q. You think it was cypress?
A. Yes, sir.
Q. Did you see any indications about these logs or any where in that vicinity of a current at any time?
A. Where these logs were I imagine there had been a current at some time, and hence some of them were lying in very low ground, which had been partially filled up by sediment from the water at the time of overflow.
Q. One of them you say was on the meander line, approximately?
A. Yes, and the other was on that south cross line.
Q. They were both in the woods, were they?
A. No, the one in section 12 was just off from a little bit of a batch of flag and scattering timber—just off from it probably 90' or 100', and the one on that south line was also in scattered timber right along between what I have showed there as two batches of flag.

——— ———.

Sworn to before me this 29th day of January, 1908.

JOS. M. CONNABLE,
Notary Public.

My commission expires Oct. 13th, 1909.

213 *Deposition of Geo. H. Harkins.*

Mr. GEORGE H. HARKINS, being first duly sworn, deposes and says:

Direct examination.

By Judge HUGHES:

Q. Where do you reside, Mr. Harkins?
A. Memphis.
Q. What is your age?

A. Past thirty.

Q. What is your occupation?

A. For the last three years I have been doing field work in surveying and engineering contracts.

Q. What education have you had in engineering work?

A. As I say, three years' actual field experience almost every day on all kinds of work.

Q. Have you seen the map which Mr. Collins has made an exhibit to his deposition?

A. I have.

Q. Upon that map appears three lines running east and west, or practically so, and various other shorter lines of figures upon and near the meander line of the old Government survey. What do these figures represent?

A. They represent the levels I took.

Q. You took the levels yourself?

A. Yes, sir.

Q. Along the course represented by these lines of figures?

A. Yes, sir.

Q. How did you do it? Explain so that the Court may understand what you mean by taking levels?

A. It has been explained to you. I assume a certain point to have an elevation of 100′—Do you mean to explain the mechanical part of it?

214 *A.* Yes.

Q. Well, we have a rod that is marked off into feet, and then into tenths of a foot. We also have an instrument that is called the level. That level is set up and the rod is held on a certain point; for instance, this point that we assume for our reading, and the reading is taken on the rod and the height*h* is determined from that reading. That is, assuming the ground elevation to be 100′ you have a reading of 3′ on your rod, and that gives you a heighth of instrument of 103′. Then you move your rod to a different point, and suppose that was 4′, that would give you a ground elevation of 99′. That is continued and the rod shifted as you go around.

Q. Now, do these figures which you have already referred to correctly represent the level of the land at the point where it is taken?

A. It does.

Q. At the point where the figures are written down on the map, does it correctly represent the level?

A. I assume so. I didn't make the map, but I assume Mr. Calhoun's scaling is correct.

Q. What other work, if any, did you do in connection with this survey besides running the levels?

A. Nothing.

Q. That was all?

A. Yes, sir.

Q. The lines of levels depicted upon the map, filed as Exhibit A to the deposition of Mr. Calhoun, shows these figures—lines of levels—crossing certain bodies of flag opening. Examine that map

and see whether or not they are represented on the map correctly, approximately, as to size?

A. These flag openings, you mean?

Q. Yes.

215 A. I should say they were—and, in addition to that I will state that in running these levels of course I made no measurements. The measurements had been previously made by the surveying party, and certain stakes had been set. For instance, I would take a reading to a certain point where I entered the flag and other readings through the flag, and another reading when I would leave the flag, but what these distances are I don't know except from the field notes made by the other party.

Q. Well, from your record and observation then can you state that they are fairly accurately represented?

A. Yes, sir, they are.

Cross-examination.

By Judge NORTON:

Q. Do you mean to say that you would be governed by a stake that you found along the line as to the point at which you would set your level?

A. No, sir; I didn't mean to say that at all. I meant to say that that and the field notes as I later saw them in book at night at the camp was the only means I had of knowing the approximate distance. I took the levels where I thought they should be taken.

Q. Were these stakes in any particular distance apart?

A. No, sir; usually they were at some even 100'.

Q. You didn't set your level then every time there was a stake?

A. No, sir, sometimes I could read half a dozen stakes, and again would have to set up four times to read one.

By Mr. ROLESON:

Q. You mean you didn't take an elevation for each stake—Did you establish the elevation at each stake?

216 A. At the great majority of them I did. Some of them, I didn't.

Q. Did you establish the elevation in between the stakes?

A. I did.

Q. You say that the surveyor's party went ahead and set the stakes and you followed them?

A. They run the survey, and blazed the line through, and I followed, yes, sir.

Q. And you took the various elevations all the way along?

A. Yes, sir.

Q. You did not confine yourself to the elevation at any particular place designated by a stake?

A. No, sir; I tried to get the general average of the ground in the neighborhood.

Q. Did you take your elevation at any special distance apart, or as the ground lay?

A. As the ground lay.

By Judge NORTON:

Q. This map exhibited by Mr. Collins indicates that levels were taken along the meander line all around?

A. Yes, sir.

Q. You took those levels?

A. Yes, sir.

Q. Is it true that frequently the meander lines was upon a lower level than the lines out in the unsurveyed part?

A. No, it is not true.

Q. I see here on the west meander line you have a point marked 96.7. What does that mean?

A. That is the elevation on the other side of the chute.

Q. Well, is it a different datum. Did you have more than
217 one datum?

A. No, sir.

Q. All of them refer to the same datum?

A. Yes, sir.

Q. This 96.7 is on the meander line and west of the chute?

A. Yes, sir.

Q. Isn't there any quantity of numbers out in the unsurveyed area that are larger than 96.7? Just look at the map and see if you don't find 97, 98 etc. Then it is true that some of the points in the unsurveyed land are higher than the meander line?

A. I said they were not frequently. I understood your question to be this—that the meander line, for instance, in running down the east bank of the chute practically follows the chute. There might be back a few hundred feet a slight rise and then a dip again. I understood you to ask me if the meander line would follow along the first ridge all the way?

Q. I didn't say anything about a ridge?

A. Well, you spoke about the higher land.

Q. Yes, I spoke of the meander line.

A. That point you just asked me about, probably is across the chute—on the other side of the chute.

Q. That can't make any difference if you used the same datum?

A. Not as an elevation, no, sir.

Q. No, I should think not. Did you follow the meander line along the southern part of 10, and do you see places marked 96, 95.5 and 95.2 along the meander line?

A. I do.

Q. Now, if you will go across the chute east of these points and get on the surveyed land you will see points marked 98, 97.6, 97.2, 96, & etc.?

218 A. Yes, sir, I do.

Q. Isn't it a fact that that land has a greater elevation than the land on the other side of the chute?

A. It has.

Q. Do you notice that along that south level line where it crosses the flag as represented near the center of 14, you see some figures there 98.3 in flag, 98.4 and a little west of the flag 98.9?

A. I do.

Q. That indicates that the flag opening is higher than the meander line at some places, doesn't it?

A. Yes, sir .

Q. And to take all the levels you made, whether crossing the unsurveyed land, as we call it, or following the meander line, they are correctly given on this map?

A. Yes, sir.

Q. Do you see on the northeast corner of 23 on the unsurveyed land some levels that read 98.9, 99.9, 99.1 and 98.5?

A. I do.

Q. That indicates quite high land, doesn't it?

A. Yes, sir.

Q. Ar-n't these higher levels than on the meander line just south?

A. Just south?

Q. Yes, and southwest slightly?

A. Yes, sir, there is quite a ridge that runs down there through the northeast corner of 23.

Q. Now, what is the direction of that ridge—northwest?

A. Northeast.

Q. It gets over in 13?

A. Yes, sir.

219 Q. Did you see anything in running that meander line to indicate that the meander line was on lower ground than the sectionized lands that were laid off into sections at the fractional sections on the line land, and the unsurveyed land on the other. Along that meander line wasn't the land just as high on one side as on the other?

A. Generally speaking, the land rises into these surveyed lands and sinks over into the unsurveyed part. Of course there are points and tongues that the meander line jumps across where it would show perhaps a lower elevation on the surveyed than the unsurveyed on the meander line.

Q. Tongues of land one way and tongues of water the other on the meander line?

A. Yes, sir.

Q. Did you take any levels at all on the unsurveyed portion?

A. No, sir.

Q. Did you ever run out into the woods a fractional piece to show what the altitude was?

A. Yes, sir.

Q. Where?

Q. There was one at fractional 14 and 15—I run 600 feet south, and then there is one on 13 and 24.

Q. Well, before we leave that one between 14 and 15. You run south from the fractional corner of 14 and 15 600′. Do you see any elevation?

A. I do.
Q. 97 in one instance, and 97.6 in the other?
A. Yes, sir.
220 Q. That is on the unsurveyed land?
A. Yes, sir.
Q. Well, you find plenty of elevations that occur on the unsurveyed land, don't you?
A. In spots, yes, sir.
Q. Well, now, you say in spots. I will ask you to read the entire south line of levels—I mean for your own information—you needn't read it aloud—from one side of that unsurveyed area to the other, and give me your judgment if it won't average as much as 97. You will find quite a number of 98's in there?
A. It would probably average 97.
Q. How did you happen, Mr. Harkins, to run out that 600' south from the corner of 15 and 14?
A. Under instructions to be able to give an idea of the ground on the outside of the meander line.
Q. Very proper instructions. Did you do it anywhere else?
A. I did.
Q. Where?
A. Oh, there are a half dozen here somewhere.
Q. I see one on the south side of 13?
A. Yes.
Q. There you get 99.9, 99.8 and 98.8. Is that correct?
A. Yes, sir. You will find one at fractional 15 and 16 running south nearly to the section line.
Q. Ih, yes. Right here. You got 97 there, and 96.*L*. Is that right?
A. Yes, sir.

Redirect examination.

By Judge HUGHES:

Q. Now, a rather indefinite question was asked you a while
221 ago, and I want to get that down correctly. I understood Mr. Norton to ask you as a matter of fact whether or not the unsurveyed land wasn't higher than the meander line. Now, it is true that certain points, little strips that stick out in the unsurveyed land are higher than the meander line, just as it is true that certain point—small tongues—of the surveyed land is lower than the meander line, is it not?
A. Certainly, I didn't mean to say that the entire unsurveyed portion is higher than the meander line by any means.

Recross-examination.

By Judge NORTON:

Q. Well, you didn't mean to say anything that was different from the elevations shown on this map?
A. No, sir, that is correct.

By Judge HUGHES:

Q. Is there a southern slope—yes, here. What direction does the water run on this land?

A. South.

Q. Which would indicate that the land falls to the south?

A. Yes, sir. In sections 14 and 23 you will find two drains that are outlets for the water to be found in this flag country.

Q. Now, what do you say is approximately the difference in elevation between the southern point of this tract of unsurveyed land and the northern part of it?

A. The general drop of the land would be probably a foot and a half to two feet—taking it as a whole.

222 By Judge NORTON:

Q. Now, Mr. Hawkins, the right hand chute is marked on this map in a way to indicate that it has a continuous and well defined channel. Did you find it that way?

A. Yes, sir.

Q. Practically as this map represents it?

A. Yes, sir. At the time I was there. When I was there there was a well defined and marked current to be seen from the east bank of the chute at any point I was on.

Q. Did it have well defined banks?

A. The greater part of the way. At the north end there is what one gentleman described this morning as a scatter, the water from the chute evidently going through and spreading down into this flag lake.

Q. Was there any water in flag lake when you were there?

A. Well, I broke ice nearly up to my waist every morning going through it. I guess there was some there.

Q. Do you remember about what date you were there?

A. I went there about the 25th of November, and was on the ground about three weeks.

By Judge HUGHES:

Q. Did you make field notes of the elevations?

A. Yes, sir.

Q. Have you a copy?

A. Yes, sir.

Q. I will ask you to file that with your deposition, marking it Exhibit "A".

A. I do so.

223 By Judge NORTON:

Q. On what section was the place you broke ice waist deep every morning?

A. It wasn't on the meander line. It was on the east half of 12 and on the middle cross line in 12 and 11.

By Judge HUGHES:

Q. What do you mean by cross line the level line?

A. Yes, sir. The level line running from east to west.

By Judge NORTON:

Q. Along there where it is marked 97, 97.*L*, 97.5, and 97.7—Is that where you mean?

A. Yes, sir—somewhere in that vicinity.

Q. Well, if there is water on that elevation at that point isn't it true that there was water everywhere else along there at the same elevation?

A. No.

Q. Any other point marked 97.5 would have water on it, wouldn't it?

A. Not necessarily.

Q. How would you account for the water being local?

A. Water can usually be cut off or dammed—regardless of elevation—by the natural lay of the ground.

Q. Well, then aside from what the figures would indicate about water being around there, is it a fact that there was a great deal of water ever-where else you went?

A. Why, no, sir—some of the land was comparatively dry, and some would have from one to three or four tenths of water on it.

Q. One to three or four tenths?

224 A. Yes, sir, depending on the location.

Q. Was the major part of the area you worked over dry?

A. The major part of it was wet. I want to say the major part on the northeast and north sides. When we come to the lower half on the west side and a good deal of the south side we found practically dry ground on the meander line.

Q. Well, there wasn't much water then that you had to wade waist deep?

A. Oh, no; not a great deal; only crossing these deep flags.

Q. And you say it could be true that while there was water there waist deep, some other point on the meander line of the same elevation might have no water on it?

A. Yes, it might have none, or not as much.

Q. Of course, when you were going through the water the level you took was on the ground and not the water?

A. I took both of them. I don't think the water level shows there.

Sworn to before me this 29th day of January, 1908.

JOS. M. CONNABLE,
Notary Public.

[SEAL.]

My Commission expires Oct. 13th, 1909.

225 *Deposition of J. A. Omberg.*

J. A. OMBERG, JR., being first duly sworn, deposes and says:

Direct examination.

By Judge HUGHES:

Q. Where do you live, Mr. Omberg?
A. Memphis.
Q. What is your age and occupation?
A. 31. Civil Engineer by profession and education.
Q. Have you held any official position in Memphis?
A. I was City Engineer for about five years.
Q. Did you, in the employment of the Chapman & Dewey Lumber Company have a survey made of Township 12 N. Range 7 E. in Poinsett County, Ark.?

A. Yes, sir—At the instruction of Chapman & Dewey, or rather after a consultation with them, I obtained from you some field notes a copy of the original Government field notes, and I sent a party up there to determine, if possible, whether there was or not any usual conditions existing there that would indicate whether that old line was ever run at all or not, and if so, whether or not it was free from overflow by the water.

Q. Well, was the survey made under your supervision and direction?
A. Yes, sir.
Q. Well, to what extent did you direct it?

A. Well, I paid four visits to the camp and directed where these lines—for instance the meander line. I didn't direct where they should be run; they were simply to follow the old field notes and determine whether that line had ever been run before or not. Of course, it was found that it had been run. I then instructed Mr. Harkins to run a reasonable number of level lines, starting
226 and crossing the meander line at various points in order to see whether there was any marked difference in the elevation of the land immediately behind the meander line on the surveyed land or immediately in front of it on the unsurveyed land. Those lines were run from a very rough sketch that I gave Mr. Harkins in my office to simply average up the number of points. I didn't tell him to select a point where the ground was low. I simply took a rough sketch and told him he could run a line here, etc., all around, and he followed that very closely.

Q. Well you have examined his figures as they appear upon the map?
A. Yes, sir, I have looked very carefully at his results.
Q. Now, what is shown there as to the difference in elevation of the surveyed and unsurveyed land?

A. On the east side of the unsurveyed lands, down in sections 13 and 23 and a little part of 12 the levels showed a slight depression on which the meander line occurred. The depression was slight

in every case it showed there by the level notes but it showed still better where the water stood.

Q. All right—go ahead——

A. Following the meander line through Section 13, we will say there was a flag opening which had run water in it practically all the way down, and runs parallel with the meander line——

Q. Have you been around that meander line, the parts that you speak of, in person?

A. Yes, sir, several times.

Q. Well, from what you have seen there, and from the figures made by Mr. Harkins, state whether or not the meander line does follow practically the line of depression through that country?

A. It appears as if it had followed it. You can see very plainly a marked difference in the unsurveyed lands and the surveyed
227 lands, Of course, I don't mean that you can go and put your foot right on the meander line, but you can locate it within 400′ or 500′. When it got down in 22 and 23 it was confusing to me at first because the surveyed lands appeared to be as low as the unsurveyed lands, and in many places lower. The contour of the whole country over there is flat—extremely flat. There is not a well defined bank to any lake that I have ever seen over there except some formed by old channels or rivers or something like that. Now down in 22 and 23—a part of 23—, as I say I was confused somewhat by the fact that there appeared to be low lands outside in the surveyed land but that is explained very easily by the fact that Little River, a that point, comes very near to the unsurveyed land and all of the drainage crosses this land—this narrow strip—into Little River, and the current was very swift across there in times of overflow, necessarily because it had quite a fall into Little River, and much of that land was cut away every year, and it would change very rapidly in a flat country of that sort if a swift current was going over it.

Q. Now, in following an old meander line this way would you expect to find an exact corresponding between the line as depicted on the survey and the line as it actually appeared?

A. No, I would not. I never did expect to be able to see anything very apparent there in the conditions. I went there to examine the conditions, not only of 7-12, but the whole country around for maps—such information as I could get to see what conditions were; in other words, to try to trace, using my knowledge of hydraulics, what the history would be of a piece of sunken land occuring at that point.

Q. Now, what I want to ask is, do surveyors running a meander line follow closely the shore line, or approximate it?

228 A. Oh, no. They approximate it. The sunk lands around this place here shows about 400 points, and there is a short line around each point. Now, they wouldn't show each one, of course but would approximate it. They cut off little tongues of land here and there, let little tongues of water appear as dry. They would simply approximate it as closely as possible.

Q. From your examination of the country itself, and from the

surveys which you have made there, you may state whether or not the map which Mr. Collins exhibits is a fair representation of the sunk land at this point?

A. I think it is. My instructions to Mr. Collins were simply to obtain what exact information he could, and that he has done, and he hasn't falsified field notes. Don't think he ever would.

Q. Now, with reference to these flags, what can you state from your own observation with reference to it?

A. Now, the flag that I know of—Of course, I am not familiar with the exact location of any piece of flag as Mr. Collins would be, or any man that has kept field notes as to just where his line crosses it, but the biggest flag—the flag in 13—I have seen that, and took some small photographs—I have them here if you wish them. It was simply a large open body at the time I saw it and had a lot of water on it.

Q. Let me see those pictures if you have them?

A. Here are two pictures of the flag taken in the norther- half on the meander line close to the northern end of Section 13.

Q. I will ask you to make these pictures exhibits to your deposition.

A. I do so. (Pictures filed—marked exhibits #9 and #10).

Q. What does No. 9 represent?

Q. That represents a view looking out into this opening.

229 Q. At what point was it taken?

A. Close to the northern end of Section 13; that is, in the northern part of this section close to the meander line, I would say three or four hundred feet from the meander line.

Q. Did you take these with a kodak?

A. Yes, sir.

Q. How far can you see where that picture is taken?

A. You can certainly see more than a mile. That is about northwest, or nearer north. than the camera was pointing according to my recollection. Of course, I can't be absolutely certain about how it was pointing.

Q. Well, is there anything else connected with that picture to which you desire to call attention?

A. Well, this picture #9 shows some small scrub timber in the foreground and scattered around generally. I found timber of this character in all of that unsurveyed land wh-ever I struck it. I have another photograph taken in section 14 in the southwest corner, which I took because I thought it was entirely characteristic of the flag that was partly grown up.

Q. What is the number of that picture

A. No. 5.

Q. I will ask you to file that picture as an exhibit to your deposition also?

A. I do. (Picture filed—marked Exhibit #5). Then I took another photograph at the same point at which I took No. 5, that is in the southwest corner of Sec. 14, looking back right on to the surveyed ground, and I have numbered that No. 6, and it shows very plainly the difference in the character of the growth of the unsur

veyed land and back on the surveyed land. Now, these are marked differences. There were many places where there was no such difference as those apparent, but there, were also a great many
230 places where there was such differences apparent. Then I have another picture, marked No. 7, which is simply a photograph of meander corner between 15 and 14, which shows the old marks on a tree where it was cut into.

Q. I will ask that you file those pictures with your deposition, marking them Exhibits No. 6 and 7 respectively.

A. I do so.

Q. You are not an expert in forestry, I presume, Mr. Omberg?

A. No, sir; I have very little knowledge of timber.

Q. Are you able to tell anything about the rapidity with which timber grows?

A. Yes, I know something of that, but my knowledge is very general. I know that certain trees are much more rapid in growth than others, and I know that I have seen on this unsurveyed land some timber that appeared to me to be very large, but none of it that was necessarily a growth older than 100 years, though some of it might have been. I think it would take an expert, and one of a very high order, to state the age of a great many trees over there. Some might be large and still be very young.

Q. What is the predominating large timber there?

A. My recollection is that it is cottonwood.

Q. Now, you may state, from a professional standpoint what would probably be the effect of an overflow coming in to this country, assuming that it did constitute at the time of the survey sunk lands?

A. I would have to have a map showing more of the country.

Q. Examine this map, which I now hand you, and file it with your deposition as Exhibit "A."

A. I do so.

Q. With reference to that map, now, explain, or rather, answer the question that I asked you?

231 A. Well, this map shows quite a good sized section of this country, and it is, as we know, a very flat country, and was all subject to overflow. I have record of the stages of the Mississippi River since, I believe, 1871, and it shows that this country had been overflowed since that time fourteen or fifteen times—possibly more, but an overflow leaving the banks of the Mississippi somewhere up north of this place and spreading over the bottoms, and getting, we will say, into Big Lake, of course, would have to raise the surface of Big Lake up to the point of overflow. Big Lake is drained by Little River, and Little River has a very tortuous course from Big Lake on down to 12-7, and through the unsurveyed lands in there, and down the St. Francis pretty close to Marked Tree. It has other branches that would lead into the Tyronza River. Now Right Hand Chute also starts from Big Lake and comes down by a much straighter course to the sunk lands, and passes partly in what is designated as the sunk lands, and into the St. Francis close to the point at which Little River comes into it. I assume that the fall, or elevation of the water in the Chute of Little River is the

same at Big Lake, where they come together and it is almost the same where they come out at Marked Tree, or in the Sunk Lands of the St. Francis above Marked Tree. That means that Little River, taking a tortuous course, would have much more of a flow in its channels than Right Hand Chute would have. In times of overflow the waters would rush into Right Hand Chute much more rapidly than they would down the Little River. The bulk of the overflow would reach the unsurveyed lands from an overflow of right hand chute before Little River would bank up into it, from an overflow of the Mississippi. They would do that for two reasons. The first is, that Right Hand Chute, having a straight course, the water would naturally come into it more rapidly than in to
232 Little River, and it would come down with greater force, and when it reached these low lands, where the banks are not well defined, an overflow would be natural. Then, on the other hand, Little River, carrying an overflow would have to fill up the sunk lands of the Tyronza Lake and would also have to fill the Tyronza River. Now, the result of that would be that the overflow from the chute would spread out over the sunk lands. It would be a very swift current, compared with the current of Little River, or any river in that vicinity, and it would be carrying, therefore, much more matter. The minute it got out of the bank and spread into the sunk lands it would deposit very quickly a large percentage of the silt it was carrying and would deposit it in the sunk lands, because the sunk lands, of course, having a large area there, the water coming into it would lose its velocity and settle. That is exactly the way we would build a Settling Basin for a city that had to pump water from the river—just as this is—and it would deposit 90% of the settlement if it stood there. Now, I say the overflow from Right Hand Chute would deposit its silt on these sunk lands; that is provided it was sunk in there 10 or 12′. If not, it would get across into Little River, because Little River would not be so full up as the Right Hand Chute, and that would get across through Section 22 and the unsurveyed lands into the Little River. Now, just how long it would take Little River coming down there to fill up a space as large as the sunk lands of Little River nobody in the world could say, but it would certainly be done very quickly. The fact that there would certainly be on land such as that a good deal of debris, which it would take up inside of a year and probably form an island in one year, and in the next year would probably shift the location of this island to where timber could grow, and when timber formed it would be much harder to wash away again.

Now, it is my opinion that if this area designated as the
233 sunk lands had 10′ say practically 100 years ago, that the Mississippi overflowing across there possibly forty times in that length of time would have caused as near as possible the conditions existing there now. There are certainly indications now that a great deal of water is carried across these sunk lands from the chute of Little River. Of course, now, there is very little carried there on account of the building of the St. Francis Levee, but before that there was an enormous amount of water, and apparently the flag openings, as they now exist, were actually during the time

the Mississippi overflowed into there, and are now what remains of the channel, where the water had enough of a flow to keep the trees from growing. Now, these will grow up with timber, and possibly soon.

Q. Well, will you explain, or state, the effectiveness of water, such masses of it as constitute an overflow, as to changing the face of a country, moving dirt and changing appearances?

A. It does it very quickly. That is a matter of common observation in low lands that are subject to overflow; in fact, throughout the Mississippi bottom. I know at one place where an old bank of the Mississippi River is 20 miles from where the river now is, and certainly within the memory of the white people of America that river has not been there. It has changed so that that land has grown up with timber, possibly three or four hundred years old, but it has shifted all about. You take the Mississippi Delta,—the land is higher on the bank of the river than it is further back. The Yazoo River's headquarters are close to the banks of the Mississippi, from which it flows directly away. The Sunflower River rises practically on Friars Point and flows back from the Mississippi into the Yazoo. This is caused by just exactly the same condition that I mention here. It is a swift current in time of overflow and carrying a great deal of sediment, and when it gets out of
234 bank its velocity is reduced, it deposits the sediment and raises the bank—and that is about what has happened here.

Q. Now, what I had in mind was the power of water in removing land, as well as depositing sediment?

A. Well, I have never followed the case very closely, but I had some connection with the case of the Sand Bar in front of Memphis in which the city of Memphis is involved. That is a large body of ground that has appeared there recently, and it changes its shape every year. It is never just the same, and there are no doubt places across the river where it is cutting in the same as it is filling up over here, except that that has been stopped now, but it is a well known fact that the greatest agent for changing the surface of the earth is water; flowing water, that is in large volume, like a river, is doubly so. It can even cut through rocks as the canons and many western rivers show. But when it is a river like the Mississippi, with a sandy bottom, the changes from year to year before the river was confined were enormous.

Q. Well, now, you may state generally with reference to this body of land, corroborating the surveyors in the lines that they made?

A. Well, I saw the corners that they had set; of course, not all of them; I can't designate just what ones they were I saw pretty clearly that they did meander around something there, and it is reasonable to suppose that it was some unusual condition. I found a difference in the growth on the land, and the position in which it lies with reference to Little River and the Chute that it has carried a great deal of water from the Chute into Little River, and that it has stopped carrying a large body recently.

Q. And you ascribe that to building the levee?

A. Yes.

235 Q. Anything else?

A. Well, nothing that I think of now. If you will let me have that map, I believe I mentioned the fact that on one side along the meander line it showed a depression from the surveyed land to the unsurveyed and I observed water standing almost entirely on the unsurveyed land. I didn't see any water standing on the surveyed land except where the chute changed its course around the northern part of it, and had left some holes in which water was standing. Now, as I have stated, the water in leaving the Chute in time of overflow would spread out over these sunk lands and would deposit its silt. Now, where it would cross the surveyed land and go into the Little River it would not deposit sediment, as its velocity would not be decreased when it left the banks. Down in the south end of Section 22, more particularly, for instance where it crossed the surveyed land and got into Little River there would be no deposit made hardly at all, but it is going away—the roots of trees are washed considerably, showing that they have been washed a great deal there. This is caused by there being too strong a current. Now, in the unsurveyed land, where there is no current it deposited all the sediment it brought.

Cross-examination.

By Judge NORTON:

Q. How old are you?

A. 31.

Q. How long have you been out of school?

A. About ten years.

Q. What was the first employment you had after getting out of school?

A. Making, I think, a contour map of some country around Brinkley, Ark.

236 Q. How long did that last?

A. Oh, I don't remember.

Q. A month or two, I suppose?

A. Well, hardly that long.

Q. Well, what was next?

A. I can't remember my whole history exactly. I have spent about four million dollars of other people's money in work of this character—surveying and engineering. I have directed all the surveys made in Memphis for the past five years, I guess. I have had to take general supervision over all of the subdivision work that was done in most of the expansion of Memphis. On the whole, I have had a pretty fairly broad experience.

Q. Well, I didn't assume that your affairs were unimportant. I only wanted to — what they were. I was willing for them to be important. The last five years you have spent in Memphis, have you?

A. Largely, yes, sir.

Q. Now, prior to that five years and after you were out of school what did you do?

A. Built Water Works, Sewers and Electric Light Plants in various towns and did a miscellaneous character of work.

Q. Well, did any of it include work in the woods or on water ways?

A. More than half of it has been work on hydraulics.

Q. You have never been on the Mississippi River service?

A. I have never worked for the United States Government.

Q. Well, have you ever done any work in the bottom on sunk lands?

A. Yes.

Q. How much?

A. Well, I had to very carefully survey White River Bottom for about 25 miles up and down the river.

237 Q. That was the river itself?

A. And the bottoms.

Q. Oh, you mean the bottoms along side of the river. Oh, yes, I thought you meant the bottom of the river. Well, please tell me again why you think a stream is higher on the bank than it is back of the bank?

A. Because, the heavier sediment is only carried by water at a high velocity, and as soon as it gets out of the banks the velocity is very much reduced and it drops the heavy sediment at once.

Q. Well, then; the Mississippi River, breaking out of banks, would soon deposit the sediment?

A. Yes, sir. A good deal of it.

Q. There couldn't be much more left?

A. Oh, yes. It would deposit the sediment in quiet places.

Q. You think then that within a short distance after the water left the stream that it would deposit the sediment. Now, why wouldn't it carry the sediment back some distance from the bank before depositing it?

A. If it found a new channel, and if the slope of that channel was great enough to give it sufficient velocity I suppose it would.

Q. Yes, sir. Well, now do you know how far this land we have here in litigation is from the Mississippi River?

A. No, sir.

Q. Do you know of any point between it and the Mississippi River where a new sediment could be picked up again?

A. Yes, sir; that could happen anywhere in the course of that stream; wherever it had a more rapid flow than its average it would pick up new sediment. I have already mentioned in my direct examination that while it would drop sediment in the unsurveyed land it would actually pick it up again where it went across section 22 into Little River.

238 Q. Well, wouldn't anything picked up by a stream of that character be a trifling thing compared to the sediment out of the Mississippi River?

A. Well, no, sir. It would be, of course, to the entire batch of sediment carried by the Mississippi, but the Mississippi carries 1,500,000 cubic feet of water per second, but the smallest stream would carry much more sediment in proportion to this volume of water.

The gutters in the street carry more sediment than any other streams in proportion to their size. The main question is the velocity of the water and character of the soil through which it flows.

Q. Well, you found from the map that a volume of water goes down from Big Lake in that Chute and gets in this sunken area; then your theory is that as soon as this sunken area is reached the water spreads and the sediment at once goes down?

A. Yes sir a large part of it.

Q. Well, upon that theory, wouldn't it be true that the upper end of this so called lake would reach a greater elevation than the lower end?

A. No, sir. The amount of sediment is dependent on the velocity, and is deposited just where the water spreads out. Just as the Mississippi does it doesn't deposit any more sediment, so far as I know, when it overflows below Lake View than it does when it overflows higher up. It is all the same. The same amount is in the water of the channel at that particular velocity and when it spreads out, and the velocity is decreased, the same percentage of sediment is deposited.

Q. But I understood the principal idea of your theory to be that as soon as still water is reached the sediment would go down. Now, I can't understand upon that theory why the upper end of the so called lake isn't higher than the lower end?

239 A. It is.

Q. Then these levels tell the truth?

A. Yes, sir, I hope so.

Q. Then, if the prevailing numbers in the upper line of levels were lower than the prevailing numbers in the lower line your theory would encounter some obstacle, wouldn't it?

A. Not at all. I can explain how a great many things of that kind happen. For instance, if this channel is narrow up here it would probably wash out quite a hole, whereas if it spread down here it wouldn't cut out so much. Now, over here there possibly was current enough to stop that pretty soon.

Q. You mean the current would stop it?

A. Yes, sir; the swifter it goes the more it will cut out.

Q. Now, all down in here I find these levels used. They show a little rise and fall all up in there. They show 96, 95 and even 94, and up there 97, 99 and 100?

A. It is all taken this way.

Q. Well, it is true, taking it all around, that the sediment settled in dead water instead of in currents, isn't it?

A. Yes, sir.

Q. It would also be true, I suppose, as a general rule that there would be more current through these unsurveyed areas than there would be on the surveyed side of the meander line?

A. No, sir, you misunderstood. I am presuming that if these were lower there would be less of a current in there than there would be where it crosses the surveyed land?

Q. Taking the surveyed land as higher?

A. Yes.

Q. But this being the case, why isn't the whole country covered?

A. How do you mean?

Q. With overflow?

240 A. Well, I didn't quite finish the discussion of that. This all occurs in the early part of an overflow. Afterwards, when Little River has filled up all of the country, the whole country that it goes through it will get just as high as the other, and it will be all dead water, and it might reverse the flow and this current come back into the chute, because it would have more of a flow.

Q. Well, wouldn't you take it to be true that there would be more current where there is a stream than where there is not a stream?

A. That is too general to be answered definitely yes or no.

Q. Well, if my idea is right wouldn't the sediment settle as much in the woods as about the stream?

A. Yes, sir. It would settle more there.

Q. Now, I believe you conclude from the larger map which you looked at that this unsurveyed area is simply another point where the water spread below Big Lake?

A. Well, my whole discussion was that if this was a low tract of land it would fill up much more quickly than the surveyed country.

Q. Wouldn't Big Lake fill first?

A. Not necessarily. Big Lake is much larger, and there may be a number of different conditions. I don't doubt that Big Lake is filling up.

Q. Do you know whether the St. Francis carries any sediment?

A. At the present time it is clear. I didn't see it. That is a different proposition. I know it doesn't carry anything like the sediment the Mississippi carries.

Q. Now, to go back to your theory of the high bank of the river compared with the land a quarter or a half mile back. Would it likely be true that the increased elevation of the bank would largely be attributable to drift that lodges on it—lodges between drift and underbrush when it reaches the bank?

241 A. Well, no; I don't think that drift would have much effect because the chances are that the river in overflowing would pick up underbrush along its banks and drift that further back. The amount of small drift would likely be as great further back as right up against the river.

Q. Well, can you conceive that a log floating out of the Mississippi would lodge on the first obstruction it struck?

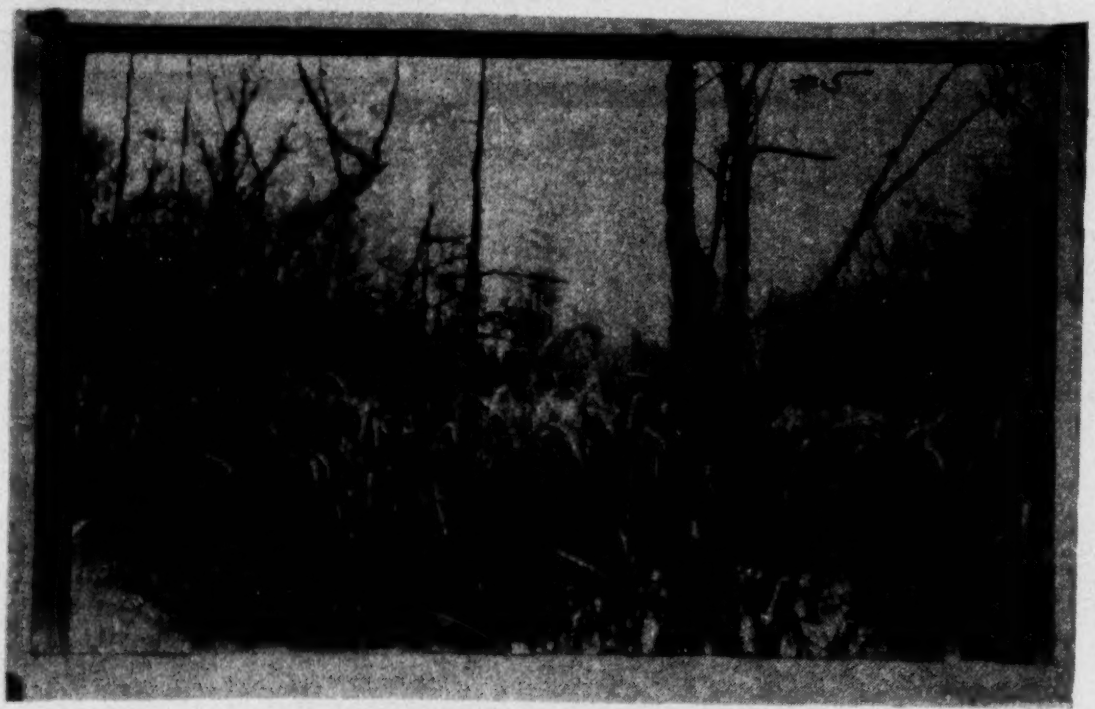
A. Well, that occurs at every overflow, and is actually measurable in some instances.

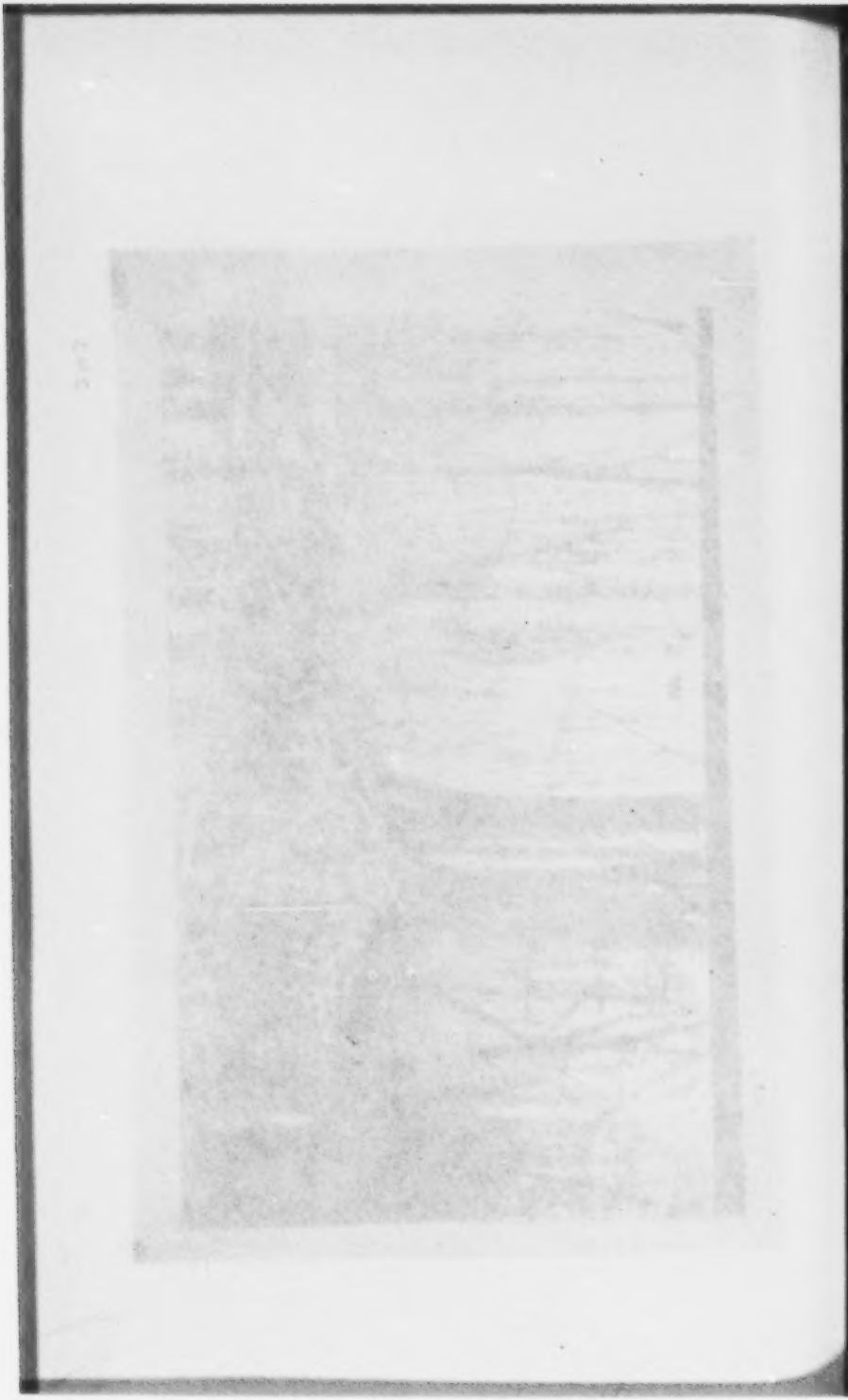
Q. Well, assuming that a log would lodge when it struck timber and lay there and rot, it would help elevation, wouldn't it?

A. It should.

Q. You can see then that the Mississippi, after it gets out of the bank will take up drift and take it along and lodge it?

A. It will not get to the main current with it. Of course, it will take some.





245

Sworn to before me, this 29th day of January, 1908.

JOS. M. CONNABLE.
Notary Public.

[SEAL.]

My commission expires Oct. 13th, 1909.

(Here follow photographs marked pages 242, 243, 244, 245, and 246.)

247 *Deposition of Capt. W. D. Connor.*

Capt. W. D. CONNOR was called and testified as follows—Oath being waived.

Direct examination.

By Judge HUGHES:

Q. Where do you reside, Capt. Connor?
A. In Memphis.
Q. How long?
A. Two and a half years.
Q. What is your age?
A. 33.
Q. In what profession or business are you engaged?
A. Officer of the army, United States Corps of Engineers.
Q. What is your official position here?
A. I am in charge of the first and second district of Mississippi River Improvement.
Q. In connection with that work—have you had to do with Engineering Hydraulics—do you know anything about hydraulics?
A. To a certain extent, yes.
Q. I submit to you a map and plat of a certain area of land in Poinsett County, Ark. in Township 12, North Range 7 East, which is made by Mr. Collins. I ask you to note that meander line running from the right to a point in Section 15. I call your attention also in connection with that map to the fact that the lands included between the lines I have pointed out in the Right Hand Chute and Little River were omitted in the Government Survey, and appear as "Right Hand Chute of Little River Sunk Lands." I hand you another map. Please note the location of the country and of the Mississippi River, and——
A. I have looked it over and know what it is.

248 Q. Very well, sir. Assuming that the region shown by the Government Survey to be sunk land was in fact sunk land at the time of the survey which was made in 1840, you may state what, in your opinion would be the effect of the overflow from the Mississippi River with reference to filling up that territory?
A. Do you mean at length?
Q. Go into it in detail in your own way.
A. As soon as the Mississippi River comes from its banks the water immediately goes down on that side of the river in the west, it being lower than the Mississippi when it is at full stage, and that goes down into Big Lake. The land between Big Lake and Osceola, or the Mississippi River, (Osceola is situated on the river) is considerably higher. The land between Big Lake and the river is higher than any other land in that vicinity, and it is rather a high ridge that runs out from the lake to Osceola. This is somewhere in the neighborhood of 245′ above the gulf level, so that when the water first gets from the banks this ridge here at Osceola

is not submerged, but the territory here in Big Lake is considerably lower. This elevation is somewhere in the neighborhood of 235', so there is a 10' ridge between Osceola and Big Lake, so that a very considerable stage of water can go from the Mississippi into Big Lake and into the Little River before the ridge running out to Osceola is submerged. Of course, this water which flows out is very heavily charged with sediment, and that water coming down from Big Lake (of course, there is a check at Big Lake) but the water comes right along and still carries certain amount of deposit. Passing out of Big Lake, the water divides and has two paths by which to continue the route. One is what is known as the Right Hand Chute of Little River, and the other is what is known as the main part of Little River. The water would follow these two routes out in different amount. The law of hydraulics depends upon the slope and the wrighted barothernometer, but these things are not
249 material. The main fact is that the fall from Big Lake to these sunk lands is the same, and the difference in length is about six miles—by the right hand chute is about six miles shorter than the route around by the main river, which would mean that the water in the chute would reach the sunk lands sooner than the water coming through the Little River, and furthermore the chute and the main river are separated by a ridge of ground 7' higher than the lands along these two routes; so that the water must come down as two channels; it does not come down as one sheet. The water then will fill up the Little River Sunk Lands before it would get into the low lands to the south of that bend. This would mean that there would be a body of water there, and after the lake was filled up this body of water would act as a check for all other water coming down that way. Of course, the water coming from Big Lake, charged with sediment, would stop when it got to these sunk lands and deposit a certain amount of sediment on what is known as the sunk lands.

Q. In your opinion, would the amount be greater on the surveyed or the unsurveyed tract as it appears on this map?

A. On what is known as the sunk lands here, because the surveyed tract, being higher, the water would run off, and would accumulate on what is known as the sunk lands, and they would catch the deposit. The amount, of course, I wouldn't say.

Q. Assuming that there was a line of depression in the soil designated on this map as sunk lands at the time the Government Surveyors run the meander line to which I referred, state whether or not the forces to which you have referred as having been in existence would be sufficient to entirely fill that up or greatly change its surface in the period which has elapsed since the time of the survey—which is about 68 years.

250 A. Yes, I think there would be a very material change in the elevation of the bottom.

Q. Considering the matters to which you have testified, and all the conditions which exist at the locality in question, would you think that the grounds of the survey as originally shown are now questionable or do these things sufficiently explain how changed conditions might be brought about; in other words, would you infer

from the mere fact that there is timber growing on this tract of land now that there necessarily was land there when the survey was made?

A. No.

Q. Why not?

A. Because I know the proverbial and well known inaccuracy of all surveys made at that time.

Q. Inaccuracy in what particular?

A. Well, they were run out inaccurately as to dimensions and descriptions, and the general inaccuracies that would occur in any survey of lands of that character where the survey was difficult to make and the supervision was very difficult to attend to by the people in authority.

Q. Well, the facts are, as revealed by the testimony of all the surveyors that this line was actually run and the government marks were found at the points designated and still exist there—some of them. Now, of course, we assume that surveyors would not ordinarily run a line through woods and call it a meander line. What I meant to ask is this—Would the action of the water of which you have spoken sufficiently account for the change in conditions which exist today from the conditions at the time the survey was made?

A. I don't know what the conditions were.

Q. Well, assuming that the map which is filed with Mr. Collin's deposition is correct, and that plat shows the existence of
251 certain territory of flag designated as swamp on the map, and this territory has been shown now to be tracts of land covered with timber mostly cottonwood?

A. Well, that could be accounted for either that way or on the supposition that one man made his survey in June and the other made it in September.

Q. But suppose that the difference does in fact exist; that the surveys were made in dry seasons, both of them—Now, would the action of the water effect the changes which now appear?

A. There would be every tendency for them to do so. 67 years of the sediment of that lake would undoubtedly make a very marked change in the elevation of the bottom.

Cross-examination.

By Judge NORTON:

Q. Captain, your theory starts out with the assumption that there was a lake?

A. Well, that seems to be admitted.

Q. But, if surveys from which the map is made are proverbially inaccurate there might be some mistake about the lake, might there not?

A. Not so much about the lake as about its boundaries.

Q. Well, if a surveyor is in the woods, with water all around him, he is more apt to be inaccurate is he not? How does he know how to turn to avoid the water?

A. By soundings.

Q. Suppose he was in a flat country with water on all sides?
A. He couldn't make any survey at all.
Q. He could make an effort couldn't he?
A. No.
252 Q. Have you ever been in that country?
A. Right here,—no; I have never been there. I know the bottom lands, however.
Q. Well, it is a flat country?
A. Yes, very.
Q. Do you know about the distance of the locus in quo from the Mississippi River?
A. Yes, it is somewhere in the neighborhood of 20 miles.
Q. Do you know how far it would be, taking the course this overflow would take, to reach that point, down through Big Lake from some point in Missouri?
A. Well, no, sir; it would not come that way. It would have to cross the low land at Osceola; there is a ridge at Osceola higher than the rest of the country.
Q. Well, this would leave the Mississippi above Osceola about how far?
A. Well, this ridge you understand——
Q. Well, taking that course, how much would the Mississippi water have to travel leaving up there—approximate it?
A. Well, say this ridge occupies the space in there (indicating on map) it would be say thirty or thirty-five miles.
Q. Well, ordinarily the water from the Mississippi River will leave a good deal of this sediment while it travels 35 miles, won't it?
A. Well, that would depend upon conditions as to the speed and the soil and material over which it flowed.
Q. And how many times it reached steady water?
A. Yes.
Q. If, in the course of that 35 miles, then, it frequently reached places where it would be practically still it would have that
253 much less sediment when it reached this point?
A. Yes.
Q. Furthermore, if it kept a current all the time and there were no dead places there would not be much deposit, would there?
A. No.
Q. Then if there were a current all the time through this country and had been continuously from the time the water left the Mississippi you couldn't count on any sediment much?
A. The current alone doesn't prohibit it—it is the change in the current that causes the deposit.
Q. Well, as this water comes through Big Lake first it would leave the sediment there, wouldn't it?
A. Yes, of course, some of it.
Q. Wouldn't it leave practically all—you know the size of Big Lake?
A. Well, you understand at this stage there is a body of dead water but after that fills up Big Lake loses its identity altogether, and the water simply passes through the lake and on into the river.

Q. Well, that is true of the surveyed land also?

A. Yes, but each one would get its quota of the deposit.

Q. Well, unless Big Lake had reached the elevation of the surveyed land it would still be dead water and receive a deposit?

A. Yes.

Q. Well, if that is true and it has not reached an elevation equal to the land about it and there is still a basin to receive a deposit, isn't it true that from there south about all the sediment that could be deposited would be what was picked up after it left Big Lake?

A. Well, I don't think so. You are assuming things that we don't know about. The descention and the fall have to be
254 taken into consideration. The fall is about 10′ according to the contours, and there would be some material picked up on its way, and a good deal of material carried right on through by the fall on account of its increased velocity. The slope of the Mississippi River is only about 6″ to the mile but as the waters pass through they do not drop any of their sediment, and I think the same things would happen here.

Q. Now, have you any reason to believe that a body of water passing through Big Lake and this locus in quo would gather any sediment anywhere along its course?

A. I don't know. I have never been down the stream.

Q. Well, if there was no such thing as a washing bank along that stream it would be true that there would be nothing to deposit except what came from the Mississippi River?

A. Yes, sir, and under any circumstances that would be probable in that locality—the sediment from the Mississippi would be the principal thing; no use talking about any other sediment.

Q. But under all circumstances and in any event, no matter where it is, whether there is a deposit of sediment or not depends on the absence of current at a given place?

A. No. A change of current is what causes a deposit. Say we have a six mile current and the river carries a certain amount of sediment; crossing a bar the current drops to five miles; then a certain amount of that sediment is deposited.

Q. You mean a diminished current would cause a deposit?

A. Yes, sir.

Redirect examination.

By Judge HUGHES:

Q. In making these surveys, from your experience with them, did the Government try to follow exactly the shore line, or
255 did they approximate it? Is it true that they showed little tongues of water which reached out into the surveyed lands, as land, and then, to even up, showed little tongues of land which reach out into the unsurveyed land as water?

A. These surveys, in those days, were very much what we call reconnaissances, more or less, simply for the location of corners, and they did not go very much into detail.

Q. It is a fact that they have included little strips of land in the

unsurveyed land and also left in the surveyed territory small tongues of water in an effort to approximate the land in the subdivision?

A. Yes, sir, that is the way it is done; they simply give an outline of the amount of water; the size of the bodies of water that could be omitted would depend on the amount of territory to be surveyed. In a large survey, of course, more could be omitted than in a small survey.

Q. Now, it has been testified to by all the surveyors, the witnesses for both the plaintiff and defendant, that this survey has been found; the marks are there, and it is unquestionably a fact that this line was run by the Government surveyors. Would you say that a Government Surveyor would go through and run a line indicating a body of water when there was no body of water there?

A. No, I don't think so.

Recross-examination.

By Judge NORTON:

Q. I want to ask you as to the comparative size of Big Lake and the area in controversy in this suit?

A. About 1/6 I should say, according to what is shown here.

Q. That is that Big Lake is about six times as big as Locus in quo.?

256 A. Approximately.

Q. Now, what importance would you attach to the matter of distance between the point where the river leaves its banks in the neighborhood of Osceola and the point in question? Would that have any material affect on the amount of sediment deposited in this section?

A. I don't think so, because after the Mississippi leaves its banks the slope is greater than in the river itself, and until it struck some low country where the slope would not be so great, or where there would be practically no slope, I don't think there would be any deposit.

Q. It all depends on the current, and not on the distance?

A. Yes.

By Mr. ROLSEON:

Q. Captain, this water comes first into Big Lake, which we will assume is about 20 miles north and south and about 7 or 8 miles east and west. Assuming that there is a basin in there of that area which the water from the Mississippi must first go into and pass through before it reaches this territory, would that water deposit a large percentage of its sediment in that territory before it got down to the other place?

A. The first water that went in would. After that I don't think it would.

Q. Now, then the first water that went in would lose most of its sediment in the first still place that it came to before it had a chance to spread out over the country?

A. Yes, it would. The first water; then as soon as that is filled up

then that same lake being a part of the running stream, has little effect upon the sediment from the stream.

257 Q. Because the current goes in there?

A. Yes, it is a current itself.

Q. As soon as it got so it would cover the whole country the deposit would be equal everywhere?

A. No.

Q. Why should it be heavier at one place than another?

A. Well, the first deposit is right along the banks. Then after that it would depend upon the timber, dead water and other things that we have spoken about.

By Judge HUGHES:

Q. Have you got the map to which you have referred?

A. I have a contour map.

Q. Now, what is the contour map to which you refer?

A. It is a map of the St. Francis Basin.

Q. Is it an official document?

A. Yes, sir.

Q. It is a part of the records of the United States Government?

A. Well, no, it is just one of the maps published by the United States.

Q. And belongs to your office?

A. Yes, sir.

258 *Deposition of B. A. Varner.*

The Deposition of B. A. Varner, Taken Jan. 23, 1908, at Poplar Ridge, by Agreement, H. F. Roleson Being Present for the Plaintiffs and Chas. D. Frierson for the Defendants.

B. A. VARNER, first being duly sworn, deposes and says:

(By Mr. FRIERSON for defendants:)

Q. State your name, age, residence and occupation?

A. B. A. Varner; age 45 years; residence near Poplar Ridge, farmer and Justice of the Peace.

Q. How long have you lived *h*ear the Sunk Land Country of the St. Francis and Little River?

A. All my life; I was born and raised here.

Q. To what extent, if any, are you acquainted with the Sunk Land country of the St. Francis and Little River?

A. I reckon I should be very well acquainted with it; I have been over it all my life.

Q. What doing? Trapping, fishing, etc.?

A. I have been over it hunting, and boating—steamboating and all kinds of boati*n*g. I am a steamboat engineer by profession.

Q. Do you know the country near the Bark Camp Opening or Lake?

A. Yes, sir, I have known it to a certain extent. I have been over it several times.

Q. When was the first time you saw that country?

A. I reckon it would be about 1878 the first time I have any remembrance of.

Q. When was the last time?

A. About 1897, I reckon, as well as I can remember the dates.

Q. What was the appearance of the Bark Camp Opening or Lake when you first saw it?

259 A. It was just a wilderness. Young switch willow, and all kind of young timber *b*rowth on it.

Q. What was the average size of the opening, if there was any opening, about?

A. I couldn't just tell you; it has been so long ago and I was small.

Q. Was it larger, or smaller, than it is now?

A. The first time I saw it, it was larger than the last time I saw it.

Q. By how much, could you say, or could you estimate the difference?

A. Something like twenty-five per cent.

Q. How did that difference in size come to pass?

A. My best judgment would be that it was due to the accumulation of sediment, etc. such as is general through this country.

Q. Was the timber growth increasing during the time?

A. Yes, sir.

Q. Do you know the lower end of the St. Francis Lake or Sunk Lands?

A. Yes, sir.

Q. What has been your acquaintance with that, as compared with your acquaintance with the Bark Camp Country?

A. I am more familiar with that country than with the Bark Camp Country.

Q. What was the appearance of the lower end of the St. Francis Lake or Sunk Lands when you can first remember it?

A. There was just a big, open body of water, with just a few scattering willows in it—very scattering.

Q. Do you know Oak Dornick?

A. Yes, sir.

260 Q. How far down into the mouth of San- Slough could you see from Oak Dornick when you can first remember about it?

A. In places you could see further than in other places; in some places you could see half a mile, maybe further.

Q. About how far could you see from Oak Dornick towards the mouth of Right Hand Chute, looking east across the channel?

A. You could see from a mile to a mile and a half or two miles, something like that.

Q. When was the last time you saw that country?

A. A year ago this last summer.

Q. How far can you see from Oak Dornick now into the mouth of Sand Slough?

A. A mighty short distance, not very far.

Q. What prevents you seeing further?

A. Timber.

Q. What kind?

A. Willows and white privet, and all kinds of water growth.

Q. Has that timber grown there within your recollection?

A. Part of it has, yes, sir

Q. How far can you now see across the channel from Oak Dornick towards the Right Hand Chute and Bark Camp country?

A. Well, sir, where they haven't cut the willows down, only a mighty short distance, possibly half a mile.

Q. What interferes with your view there now?

A. Willows.

Q. Have those willows grown largely within your recollection?

A. Yes, sir.

Q. State whether or not you have observed any changes in the depth of the water or the level of the land in the Sunk Lands at the lower end of the St. Francis Lake, and in the Right Hand Chute?

A. Yes, sir; I have; outside of the channel.

261 Q. State what changes you have observed?

A. The water is getting more shallow each year in parts of it.

Q. What changes in vegetation have you noticed, if any?

A. In the lake, there isn't very much vegetation except trees and timber, such as willows and the like of that; no flag or smartweed there to amount to anything.

Q. Was that the case when you first knew it?

A. No, sir.

Q. Is cottonwood tree of rapid growth or of slow growth?

A. I would call it a very rapid growth.

Q. Have you any idea how much it grows in a year?

A. No, sir, I couldn't say.

Q. Are these changes of which you speak general throughout the sunk lands country?

A. Yes, sir, I think they are.

Q. To *what* extent, if you can estimate it, has the lower end of the St. Francis Lake or Sunk Lands grown up in timber within your recollection?

A. The opening there has grown up something like fifty per cent, is the best estimate I can make of it.

Q. Now, what can you say of the Bark Camp County with reference to its growth, if any?

A. I couldn't say that it has grown up so much; there is more timber in Bark Camp than there is in the foot of the Lake, but then there was more when I first saw it. It is more of a timbered place.

Cross-examination.

(By Mr. ROLESON for plaintiffs:)

Q. Where is Bark Camp located?

A. Bark Camp is located a little bit North of East of Oak

262 Dornick; right down south of the lower end of Buffalo Island.

Q. What do you mean by Bark Camp?
A. I just mean a separate woodsy place, or swamp down in there to itself. It is not cut off, but it is to itself. There is Bark Camp and Ash Camp and Right Hand Chute——
Q. Is it a kind of lake?
A. Yes, sir, it is a kind of swampy place.
Q. Is it an open place, or grown up in willows?
A. There are some few openings, runs.
Q. How big an opening was it when you saw it last?
A. I couldn't say; there is more than one in what we call Bark Camp.
Q. You mean there is more than one opening?
A. There is willows in it. You see there is an opening, and then little willow, and then an opening.
Q. How large was the largest opening the last time you saw it?
A. I couldn't say just how big, it is a country I just passed through and hunted over sometimes.
Q. How did you pass through there, the last time you were there?
A. In a boat.
Q. Which way did you go to get there?
A. We went through Lead Fork.
Q. Where does Lead Fork run?
A. It runs into St. Francis Lake.
Q. At what place?
A. At the lower end of Hatchie Coon Island, just below the lower end.
Q. Does it run from Right Hand Chute to the St. Francis River?
A. Yes, sir, the waters do; run from the Right Hand Chute into Bark Camp country.
263 Q. How far is it from Right Hand Chute to Bark Camp?
A. Not but a short distance. I think they all run out of Right Hand Chute—Bark Camp itself.
Q. Which side of Right Hand Chute is Bark Camp on?
A. Bark Camp Overflow, it is on the east side, I think.
Q. Don't you know?
A. Yes, sir.
Q. That Bark Camp Overflow, you say?
A. Yes, sir, it is all the same. We call it the Bark Camp Overflow; it is a swamp, or slough, or lake, or place.
Q. You say it is East of Right Hand Chute. How far?
A. Right along close to Right Hand Chute.
Q. Runs up to it and joins it in some places?
A. Yes, sir, the waters run in there together.
Q. How many Bark Camps are there?
A. Two that I know of.
Q. What are they called?
A. No, sir, there are not two different names that I know of.
Q. Do you know where that old shanty is that is on Little River in Section 22? Have you ever been to Lepanto?
A. Yes, sir.
Q. Which way does the river run from Lepanto?

A. I declare Little River is so crooked that I couldn't tell.

Q. Isn't it a fact Little River runs North for several miles without bends? Did you ever go by boat from Lepanto down Little River?

A. Yes, sir.

Q. From three miles after you — Lepanto, which direction does the river run—Little River?

A. It runs so crooked, I couldn't tell you; I don't know
264 about the survey.

Q. Do you know where Mr. Potter lives?

A. Yes, sir. I have been to their place on the river. (Examining map shown by Roleson) I judge that map is correct?

Q. If this blue print that I show you here is a good map, the river flows nearly north from Lepanto about three miles?

A. I suppose so.

Q. Do you know where that cabin is that stands on the North bank of Little River about three miles from Lepanto, where the river turns West?

A. I am satisfied I know about where it is at. I have been up and down Little River nearly all my life.

Q. Have you ever been there on horseback, or in a dugout, up to that old cabin?

A. No, sir, I steamboated on Little River principally; I couldn't tell y-u whether I have been to that old cabin or not.

Q. Do you know where that old cabin is; could you go there to it?

A. I could go up the river to it; the way I always went.

Q. Which way is Bark Camp from that cabin?

A. I couldn't say about the direction from there. I don't know anything about the survey in there.

Q. Going up the Right Hand Chute of Little River, how many miles can you go up there before it spreads out through the country there? How far north of Oak Dornick is it, or from a line east from Oak Dornick, before it plays out?

A. The Right Hand Chute would go away North.

Q. How far, about?

A. Do you mean the upper end of Right Hand Chute, where it comes out of Big Lake?

Q. Does it come out of Big Lake?

A. Yes, sir, it comes out of the foot of Big Lake.

Q. So this Bark Camp you speak of is not a spread out
265 from Right Hand Chute?

A. It is just an overflow or bog that spreads out of Right Hand Chute.

Q. You say there is two of them; where is the other one located?

A. About three or four miles south of here on the St. Francis, that is, the other Bark Camp that I am talking about.

Q. And when did you say you were first in that country?

A. It must have been about 1878, I reckon. I was a boy.

Q. How long was it after that before you went back over there?

A. Well, probably it was two or three years; I can't say just how

many. Maybe I would be over it soon after, and maybe a year or two, and I did not pay any attention to time.

Q. How many times were you over that, do you think, altogether?

A. I couldn't tell just how many times I was there. I was just hunting when I was about Bark Camp, and I wouldn't stay there any time hardly, just passing through.

Q. Did you ever go right straight east from Oak Dornick to the Right Hand Chute?

A. No, sir, and I don't think anyone else ever did, either.

Q. Which way did you go?

A. It depended on which way we wanted to go. If we wanted to go up towards Bark Camp, we would go up the St. Francis River to Lead Fork and through Lead Fork into that country.

Q. How far from Oak Dornick would you have to go up the St. Francis before you would get to Lead Fork?

A. Something like five or six miles.

Q. Then you would go through Lead Fork there into Right Hand Chute?

A. Yes, sir.

Q. Then would be above Bark Camp, or below it?

266 A. I would be below Bark Camp.

Q. How far below it ?

A. I couldn't just tell you how many miles. Some ways you would go up, it would be one distance; some ways another. Over land it would be just a little way; by the bends and turns of the chute, it would be quite a little ways.

Q. When you struck the Right Hand Chute there, what kind of country was on the east side of Right Hand Chute?

A. Some of it would be heavy timbered country; cane more or less all along; but all through that country is what we call a swampy country.

Q. How long since you have been over there?

A. Ten or twelve years, I expect.

Q. Don't you know that on the east side of Right Hand Chute there, a distance of a mile to two miles there is today nothing but heavily timbered country?

A. I could not tell you.

Q. Was it not that way ten years ago, the last time you saw it?

A. Yes, sir, I think it was.

Q. Don't you know it is at least a mile to two miles from Right Hand Chute east through a heavily timbered country before you come to any kind of an opening, flag or anything else?

A. I don't think there is much opening in there.

Q. Don't you know it is at least a mile to two miles from Right Hand Chute east through a heavily timbered country before you come to any kind of an opening, flag or anything else?

A. I think it would be. There is some heavy timber in there.

Q. Is there heavy timber in there at the place you say Bark Camp used to run in there and spread out from Right Hand Chute?

A. Yes, there is heavy timber in places over that country,
267 and some openings spread out.

Q. You stated awhile ago that this Bark Camp opening opened right out of Right Hand Chute?

A. I said all that water in there connected together.

Q. The waters connect from Crowley's Ridge to the Mississippi River when they get high enough?

A. Yes, sir.

Q. Do you know whether there are two Bark Camps, one called Little Bark Camp and the other Big Bark Camp, and always have been known as that?

A. No, sir; I only know there is a Bark Camp on Right Hand Chute. The other Barck Camp I know is on the St. Francis River.

Q. When you first knew that country up there, you say it was just an overflow or swamp, was it?

A. A swamp, yes, sir.

Q. It was not an open lake?

A. No, sir, there were openings in it. There was not much flag; there was some flag.

Q. It would go dry in the summertime and fall?

A. I have seen it dry. Some years it don't dry.

Q. Some years it stays dry as long as it stays overflowed?

A. I would think it did, some years. Some years it does, and some it don't.

Q. When did you first know the lower end of St. Francis Lake?

A. I reckon about 1878. I became very familiar with it in 1881 when the Frisco Railroad was building.

Q. In 1881, what sort of country was it between the foot of the Lake and Oak Dornick?

A. There wasn't any country between the foot of the lake and Oak Dornick. I mean Old Oak Dornick, that sits Northwest
268 from the foot of the lake, that mound in there that is called Oak Dornick. That mound is right in the edge of the opening at the foot of the lake. In 1881, there wasn't anything between that dornick and the foot of the lake, except water. I was there three days landing corn at Oak Dornick, in 1881.

Q. Wasn't there a road that ran from Old man Purcell's neighborhood by Oak Dornick to the foot of the lake?

A. Yes, sir.

Q. How did you go from Oak Dornick to the foot of the lake?

A. Do you mean in dry times? In 1881 when the lake was right dry, I wasn't there, but I saw the road, I boated corn on the water, not on the ground.

Q. I know; but you were sufficiently familiar with it to know how it was in dry weather also?

A. Yes, sir.

Q. In 1881, is it not a fact that the lower end of the lake in dry seasons was entirely dry, so that you could ride and drive over it and grass grew over it?

A. Yes, sir.

Q. And from the Oak Dornick and all around it and down to the foot of the lake, there were clumps of willows here and there?

A. On the edge of that there were willow, a few scattering willows over the opening.

Q. It was that way in 1881?

A. Yes, sir.

Q. Isn't it that way now?

A. It is a whole lot worse now. It is full of switch willows now; the opening has grown up in willows.

Q. In dry seasons, as far back as you can remember, is it not a fact that the lower end of the St. Francis Sunk Lands were dry, and people hunted over it and drove over it?

269 A. Yes, sir.

Q. It was all land except the channel of the river?

A. Except the channel of the river and some few openings over on Ash Camp; and it was very boggy and marshy. On Lead Fork there would be marshy places after the whole had gone away.

Q. Down on those little dornicks and around Oak Dornick, and down there, there are still willows on them?

A. Yes, sir.

Q. Willows about the size of your leg and body; the largest one is about the size of your body?

A. Yes, sir; from switches up to six and eight inches through along up there.

Q. Weren't those trees about that size when you first saw them?

A. No, sir, in the opening I spoke of at the foot of the lake there were a few scattering willows; they were old stubby apple-tree looking things. They are long and slim now, more of a slender growth. Then it looked more like an old apple tree than anything else I can compare them to.

Q. Those willows on Oak Dornick and the others are about the same size now as they were then, are they not?

A. I think they have grown some. I expect they are all cut down right on Oak Dornick.

Q. About when you can first remember the country down there, coming up out of the river into the foot of the opening, what was on the right hand side of the channel, on the east side of the channel?

A. Yes, sir, willows.

Q. Bunches of willows?

A. Yes, sir.

Q. How far is it across there now from the channel of the St. Francis River over to the Right Hand Chute, directly east?

270 A. It is a good way, three miles probably.

Q. You said awhile ago that when you wanted to go from Oak Dornick to Right Hand Chute, if you wanted to go up, you would go up five miles or so to Lead Fork; why not go straight through east?

A. There were flag openings in there, you couldn't push a dugout through. There would be flag openings, and then willow—big flag openings, ever so big.

Q. So between St. Francis River and the Right Hand Chute there were flag openings and willows, and flag openings and willows?
A. Yes, sir, and a lot of open water.

——— ———.

Further deponent saith not.

STATE OF ARKANSAS,
County of Craighead:

I, Chas. D. Frierson, do sole-nly swear, that on January 23, 1908, the deposition of B. A. Varner was taken at Poplar Bluff, Arkansas, in the case wherein St. Francis Levee District was plaintiff and Chapman & Dewey Land Company was defendant, by agreement, to be used in all the cases pending in the courts wherein Chapman & Dewey Land Company was party, and the Levee Board or its grantees were parties, involving unsurveyed lands, pending at that time; that H. F. Roleson represented the plaintiffs and Chas. D. Frierson represented the defendant at the taking; that by agreement the said Chas. D. Frierson reported the deposition in shorthand, and afterwards transcribed it; that the above and foregoing ten pages contain a full, complete and accurate report and transcript of the testimony of said Varner as given and reported by said Frierson in shorthand, and same is correct.

CHAS. D. FRIERSON.

Subscribed and sworn to before the undersigned Notary Public for Craighead County, Ark. Witness my hand and official seal, this May 20, 1908.

[SEAL.] MINOR M. MARKLE,
Notary Public.

My Commission expires Jan. 31, 1910.

In the Chancery Court of Poinsett County, Arkansas.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT, Pl'ff,
vs.
CHAPMAN & DEWEY LAND COMPANY, Def't.

RITTER, BLUTHENTHAL & HEILBRONNER, Pl'ffs,
vs.
SCHULTZ et al., D'f'ts.

NATIONAL HANDLE COMPANY, Pl'ff,
vs.
CHAPMAN & DEWEY LUMBER COMPANY, D'f't.

271 *Deposition of Sterling Burrow.*

The deposition of STERLING BURROW, taken by agreement to be read in evidence in the above entitled causes, taken at Poplar Ridge, Craighead County, Ark., H. F. Roleson being present on behalf of plaintiffs, and Chas. D. Frierson for defendant; the witness being first duly sworn, deposes and says:

(Questioned by Mr. FRIERSON, for Defendants:)

Q. Please state you- name?
A. Sterling Burrow.
Q. What is your age?
A. I will be 86 years old the first day of March.
Q. How long have you lived in this country around the Sunk Lands of St. Francis and Little Rivers?
A. I have been here ever since 1858 in the Sunk Lands. Then I lived on the St. Francis River, between the old Burrows place and Marked Tree, and here pretty *he*arly ever since I have been in the State of Arkansas.
Q. Did you live below Old Town or Lake City at any time?
A. Yes, and down on the river below Marked Tree 8 or 10 miles.
272 Q. Where did you live at the time of the Government survey?
A. On what is called the old Burrow Place, 10 or 12 miles below Marked Tree; not very far from the Ferry, about three miles above the ferry on the river at what is called the Neely Mounds.
Q. Did you see the Government Survey being made around the Sunk Lands?
A. I did on the river. I moved here in 1858, and I could still see the corners; and they just went on down the river.
Q. In those days were you familiar with the St. Francis and Right Hand Chute Sunk Lands?
A. Yes, sir.
Q. What did you do on them?
A. I trapped and rafted. My daddy was a rafter; that was in his day. He cut and hauled timber every fall.
Q. How frequently did you pass up and down through the St. Francis and Right Hand Chute Countries?
A. I never fooled any in the Right Hand Chute. I was up and down the St. Francis River in the fall and winter. My daddy farmed pretty big when summer time came.
Q. When was the last time that you were over the lower end of the St. Francis Lake?
A. (To his wife.) Have I been down there since we were married? I was down to Marked Tree in a boat 15 or 16 years ago.
Q. I believe you told me you ceased to be familiar with it about 20 years ago?
A. Twenty years ago, I used to trap in it nearly every fall.
Q. What was the appearance of the lower end of the St. Francis Lake when you were familiar with it and trapped there?
A. There was a channel but flat ground out for a mile; yes, and going towards Right Hand Chute there was flat ground out for two or three miles and overflow. On yonder side of the Lake
273 about Sand Slough, where Sand Slough turns out, it was overflow for miles out West.
Q. What was the character of the vegetation in that country?
A. Willow and gum and such like as that.
Q. Wasn't there any flag?

A. Yes, sir, there was flag about four miles wide and about fifteen miles long.

Q. Where was that?

A. From the lower end of the lake up; and there was a strip of higher ground between that and the river, that was a mile or more in width. That was between Sand Slough and the channel of the river. That high ground took in the Miller Mound. Sand Slough ran down into the river way down ten miles below Miller Mound. I have run through it many a time trapping it, at the foot of the lake right on round down the country, didn't run the channel.

Q. From the foot of the lake up to Oak Dornick, at the time you were familiar with it, what sort of country was that?

A. It was all overflowed when the lake is up like it is now.

Q. Was any of that overflowed land or flag opening growing up or filling up with growth at that time?

A. Yes, sir, with thorns and willows.

Q. Then when you used to pass through it, could you notice from time to time that parts of it had grown up more than before?

A. Yes, sir, of course I could notice those thorns and flags so thick that you couldn't ride through them. I have rode over flag and willows I reckon a thousand times, going hunting on my horse. When the spring came, it was all covered with water.

Q. You have seen the Government corners of the meander line around that part of the Sunk Lands?

A. Yes, sir, some.

274 Q. As a rule, can you state, whether or not those lines were approximately around the edge of that big open country?

A. I don't know how they done that country down there. It was wet and they had to wear gum boots to do what they did do; and the high land was only a mile or so wide, and the rest was a big lake of water and flag and everything else like a swamp; and in the spring of the year you couldn't ride through it at all it was so boggy.

Q. From the time that you first began running the sunk lands at the lower end of the St. Francis Lake to the time you ceased to do so, was there any filling up that you could notice, or any growth of timber?

A. I never noticed any at all to amount to anything only the small dornicks washing up in places; I don't know how them dornicks is made up now.

Q. But the timber growth was growing up there?

A. Yes, sir; willows and tupelo gum, that is about all.

Cross-examination.

By Mr. H. F. Roleson, for Plaintiffs:

Q. You say you lived about Neely Ferry?

A. Yes, sir, about three miles above.

Q. How far below Miller Mounds?

A. About ten miles.

Q. Where did Sand Slough empty into the St. Francis River?

A. Right below the Hooper Mounds, five or six miles below Miller Mounds, and Miller Mounds are about three miles below Marked Tree.

Q. Sand Slough came out of the lake somewhere?

A. Yes, sir, about Oak Dornick.

Q. It ran down through that country and went into the St. Francis River?

275 A. Yes, sir, the slough part did, but the flag and willow made off from Sand Slough.

Q. The slough part made into the river five or six miles below Miller Mound?

A. Yes, sir.

Q. Was that flag and willow all out on each side?

A. All on the southwest and west side. There was a little streak of land between that Slough and the river, about a mile wide I think.

Q. How long since you have been down in that country where Sand Slough was?

A. Twenty some odd years.

Q. Did you ever go up Little River much?

A. No, sir, I never did go up Left Hand Chute plump up to the Lake, but I have been up it 15 or 20 miles rafting.

Q. How long ago was that?

A. Oh, that's been before the war, I believe.

Q. You say you have not been down about the foot of the lake in fifteen years?

A. Yes, sir.

Q. About what year was it you ever first saw the foot of St. Francis Lake, or Sand Lands?

A. In 1856, I believe.

Q. How much had that country changed in the way of looks, along at the foot of the lake, and around the Oak Dornick, from that time till you ceased to be familiar with it?

A. The water changed; when you struck the foot of the lake you used to couldn't pole, it was just soft mud; and now it's a sand bar all the way, it is shallow.

Q. You are talking about the channel of the river?

276 A. Yes, sir.

Q. Has the general country changed much?

A. No, sir, I couldn't see very much change about it.

Q. When you first saw it there were little dornicks and willow and flags, and it was that way the last time?

A. Yes, sir.

Redirect examination.

(By Mr. FRIERSON for defendants:)

Q. But these little growths of timber and the like were increasing in size during that time, were they not?

A. I suppose they would; the trash would settle in the timber; it is generally thought trash will do that

Q. And you can remember that it was formerly so soft at the foot of the lake that you couldn't hardly pole over it in a boat?

A. The channel was so deep and the bottom so soft you couldn't hardly pole; it was flat land running up through the water, and you had to go at a mighty dry time to catch the water off of it; I don't have any idea that part of the country was ever surveyed.

Q. At the time you ceased to run up in that country, there were no trees in there of size sufficient for Government corners, were there.

A. No, nothing but willows or something like that. Willows grow everywhere, you know; when you go in a lakey country you will always find a dornick of willows scattered here and yonder, all the time. It has never been a clear, open lake since I have known it. It has always had brush in it.

Q. But when you knew it first, the flag openings were several miles in width?

277 A. Yes, sir; after you went below Oak Dornick. and it is down the Sand Slough country. The flag opening and willow sets out from Sand Slough to Gum Ridge, and down Gum Ridge and used to be four miles wide, it used to be.

Q. How far could you see from Oak Dornick towards Right Hand Chute when you were familiar with that country?

A. I could see, I expect, a mile and a half or two miles; the willows were very low then.

Q. Could you see Thorn Point from Oak Dornick, then?

A. Why, Lord, you bet you could.

Q. Do you know where the railroad dump crosses Sand Slough now?

A. No, sir, I haven't been there about Oak Dornick since the railroad was there.

Q. How far could you see from the Oak Dornick down into San-Slough?

A. A mile or two; you could see way below where I understand the railroad is.

Recross-examination.

(By Mr. ROLSEON, for pl'ffs:)

Q. You say that down that Sand Slough country from Oak Dornick you used to could see a considerable distance, into a sort of opening?

A. Yes, sir.

Q. Outside of the channel at the foot of the lake, was there any difference between the last time you saw it and first time?

A. I don't know. Some of them said it was growed up in willows nearly a mile; but I couldn't tell any difference. The most I could tell was the depths of the water. It used to be deeper. It is now washed full of sand. I have crossed there many a time in a wagon.

Q. There used to be a wagon road that crossed at the foot of the lake?

A. Yes, sir.

Signature waived: Further saith not.

278 In the Chancery Court of Poinsett County, Arkansas.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LUMBER COMPANY, Defendant.

Deposition of Edward Tolbert.

EDWARD TOLBERT, called for the defendant.

Direct examination by Mr. HUGHES:

Q. Where do you live and how long have you lived there?

A. I live at Gilmore, Crittenden County, Arkansas, and have lived there for eighteen years.

Q. What has been your occupation or business?

A. Sawmill business.

Q. By whom were you employed?

A. For the last ten years by the Chapman & Dewey Lumber Company.

Q. Have you had any sawmill experience outside of that you had at Gilmore?

A. Yes, sir in the State of Illinois.

Q. For how many years have you been engaged in the sawmill and logging business?

A. For about 22 years.

Q. What kind of timber have you handled in that period of time chiefly? What has been used at that saw mill for the last 18 years?

A. Well, I have handled cottonwood and sycamore; principally cottonwood, sycamore and gum—more cottonwood and gum than anything else. Besides that I have estimated quite a lot of timber for other peo-le.

Q. Have you handled considerable cottonwood in Gilmore?

279 A. Yes, sir.

Q. Have you handled more or less of it during the period of time you have mentioned?

A. Yes, sir, I have.

Q. What particular duties did you perform in connection with that sawmill at Gilmore?

A. I am the manager of it—look after the timber interests and buy the timbered lands.

Q. Have you had any experience in what is called estimating timber?

A. Yes, sir. I have bought all the timber that has been used at

that saw mill and have estimated all that has been estimated at that saw mill for the past 18 years. Besides that I have estimated quite a lot of timber for other people.

Q. What experience have you had in estimating the ages of cottonwood trees or logs?

A. The best knowledge that I have of it is that land that I have cleared up.

Q. Have you cleared up land on which cottonwood timber had been standing?

A. Yes, sir, I have cleared up 1,200 acres.

Q. Do you remember at what period of time?

A. Some of it about ten years ago.

Q. Do you know a stream of water called the right hand chute of Little River?

A. Yes, sir.

Q. Do you know a place in the Sunk Lands of the right hand chute of Little River?

A. Yes, sir.

Q. What name is given that in the locality by the people living around there?

280 A. The part I am acquainted with is known as the scatters there on right hand chute, between it and Little River.

Q. Do you know it as Bark Camp?

A. Yes, sir,—two of them—Big and Little Bark Camp.

Q. These names are applied to the two different runs there?

A. Yes, sir.

Q. Do you know where sections 14, 15, 22 and 23, township 12 north range 7 east lie?

A. Yes, sir.

Q. Have you made estimates of the amount of timber cut on these sections?

A. Yes, sir.

Q. Who assisted you in making the estimates?

A. Mr. Riley.

Q. You may state the manner in which these estimates were made?

A. Well, I had the section lines run on these sections.

Q. By whom?

A. I forget the man's name—Davis was one of the men working under this man—Tom Davis—he was one of the men under the direction of the man in charge of the camp and I took estimates of the timber. It took two of us to do the estimating. I hired a man to go and blaze lines from these section lines they had run, and we would take streaks so that we might see all the stumps of the timber that had been cut, and we went through it and saw whether it was cottonwood or gum, that is the way we estimated it. We made the section lines first and then ran lines parallel with these section lines and close enough to it, so we could see what kind of timber had been cut and the number of the stumps.

Q. Then what did you do?

A. All of the timber in between—all of the different kinds
281 of timber that had been cut, and at different times it had been cut, we measured from 10, 12 or 15 trees in the bunch, in a certain locality, and we would go on through again and at different places and take the measurements again, so as to get what we thought the timber would average.

Q. Can you say as to the kind of stumps on these sections?

A. Yes, sir.

Q. Did you make a separate account of the stumps on the surveyed and unsurveyed lands in these sections?

A. Yes sir.

Q. Did you make a separate account of the stumps, old and new on these sections?

A. Yes, sir.

Q. What ages did you set down in your estimate?

A. We figured that certain stumps had been cut off over three years and over that, the other looked like it was 7 years old and from that on up to 15 years. The cottonwood stumps looked like they were 15 years old—they were practically all rotten and the bark off of it, and showed it had been cut at least 15 years.

Q. You made more than one list of the estimate of timber?

A. Yes, sir.

Q. What do you know about how long a tree has been cut?

A. By the amount of the decay. A cottonwood tree with the top of the tree lying there, we made allowances for its age, and where the tree is cut for three or four years back, the wood will be decayed some three or four inches—some 2, 3, or 4 inches of it will be rotten.

Q. How long will it take wood to rot under the circumstances you have mentioned?

A. From 3 to 4 years.

282 Q. How long, if you know, will a cottonwood log lie in the woods and remain a good log, in this country?

A. About two years.

Q. Is there much sap to cottonwood?

A. Yes, sir.

Q. Is there any difference in the durability of sap and the heart?

A. Yes, sir.

Q. When you speak of it being good two years, do you mean that the sap would be good?

A. No, sir, it would be rotten; it would not be any account; it would not be fit for lumber; it will be streaked or spotted—rotted in spots and streaks.

Q. How long will the heart last?

A. They heart will get rotten streaks in it inside of three years.

Q. How long will it take cottonwood to become soft in the woods?

A. From 5 to 7 years; if it laid in a wet place it would become soft quicker than if on dry ground.

Q. You made separate lists of the timber cut on the surveyed and unsurveyed lands?

A. Yes, sir.

Q. And separate lists of that cut within three years, in your judgment and of that that was over that age?

A. Yes, sir.

Q. Did you also make a separate list from each section of this land?

A. Yes, sir.

Q. You may state what the amount of the cottonwood was that was cut off of all this land that you found?

283 A. The amount of cottonwood cut off of the surveyed land in the section, 3 years and under 389,000 feet; 7 years and over 252,400 feet. On the unsurveyed land 3 years and under 426,400 feet; 7 years and over 896,000 feet. In ascertaining the ages—that is the time the trees had been cut, we looked to see whether it had been recently cut or if it was an old cut. Some of it was very old and the stumps almost gone. There didn't seem to have been any cut down in four or five years.

Q. From your experience in the sawmill and logging business, you may state what is the usual size of a cottonwood tree, in number of feet, found in this country, in the average cottonwood tree, log measure?

A. We usually estimate it according to the number of feet in the tree. Some pieces will run larger but as a usual thing 1,200 feet is a big average for cottonwood timber. I have estimated a good many pieces and then measured the timber coming off of it.

Q. How many trees did you find cut on the unsurveyed part of section 14?

A. 32 trees of the age of three years and 50 of the age of 7 years.

Q. You found 32 trees—cottonwood—of three years and under cut on the unsurveyed part of section 14?

A. Yes, sir.

Q. How many cottonwood trees did you find that had been cut 3 years and under on the unsurveyed part of section 15?

A. 74.

Q. What did you estimate to be the number of feet?

A. 1,200 feet on section 15. The timber run a little bit larger than it did any where else, in sections 22 and 15.

Q. You estimated these trees at 1,200 feet each?

A. Yes, sir.

284 Q. How many cottonwood trees did you find on the unsurveyed part of section 22 three years and under?

A. 233.

Q. How many cottonwood trees did you find cut on the unsurveyed part of section 23, three years and under?

A. None at all.

Q. Did you find some trees that were cut on the surveyed lands?

A. Yes, sir.

Q. Were they fresh cut or old cut?

A. They looked like they were cut last year—a part of the logs were lying in the woods.

Q. You say they appeared to be cut last year?

A. Yes, sir.

Q. Did you estimate the amount of that timber?

A. Yes, sir

Q. State the amount estimated by you on the surveyed lands in this section?

A. 227,772.

Q. That includes the 4 sections you have mentioned does it?

A. Yes, sir.

Q. Are you acquainted with the growth (whether rapid or otherwise) of cottonwood timber?

A. Yes, sir.

Q. Is it slow or rapid?

A. It is a very rapid growth.

Q. You may state any facts within your knowledge indicating the rapid growth of cottonwood?

A. Well, sir, I am very well acquainted with the land around Menasha Lake and in and around Old River Lake. The biggest part of it is in Crittenden County, in township 9 range 8
285 east. When I come in there ten years ago about two sections of it was covered with small cottonwood, nothing on it was larger than a man's thigh. There is timber on it now 20 to 24 inches in diameter. We frequently find trees there 20 to 24 inches through and there was scarcely anything larger than a man's thigh there ten years ago. I hunted over the land and was over it almost every year for the last ten years.

Q. Have you had any experience in logging cottonwood timber from land after it had been cut off once?

A. Yes, sir.

Q. What was the result?

A. I found a lot of it after I had cut it off ten or 12 years ago that I could get good logs off of the second time.

Q. What is the principal growth upon this unsurveyed land in controversy in this suit?

A. Ash and cottonwood.

Q. Is it large or small?

A. Small.

Q. The principal large timber is cottonwood?

A. Yes, sir, it is larger than anything else.

Q. In your work as a sawmill man have you had occasion to go over Mississippi, Crittenden and Poinsett counties to look up timber?

A. Yes, sir.

Q. Do you know anything about any change that has taken place—changed conditions—in that country since the construction of the St. Francis Levee—whether there is any change in the lakes and other bodies of water as to size since the construction of that levee—whether or not these lakes or some of them have more or less water in them?

A. Outside of the levee you mean?

Q. Back of the levee?

286 A. Yes, sir.

Q. Do you know whether or not it is true that the leveeing

of the Mississippi River has caused a great many of the lakes to become susceptible of cultivation in recent years?

A. In some few of them.

Q. Any within your knowledge?

A. Yes, sir.

Q. What about Walker's Lake, do you know anything about that?

A. No, sir.

Q. You knew this country at the time it overflowed did you?

A. Yes, sir.

Q. I presume that you were not over any of the particular land at the time it was overflowed?

A. No, sir.

Q. Were the overflows coming in before the levee was built deep or not?

A. Yes, sir, they were deep.

Q. What was the character of the water coming in from the Mississippi River during the periods of overflows?

A. Always muddy.

Q. How long would the overflow generally remain in the country?

A. From six weeks to two months.

Q. To what extent would it spread out over the country?

A. All over it.

Q. Was any land left out?

A. Hardly.

Q. Have you been acquainted with the market value of the timber during the period of 18 years past?

A. No, sir, not particularly. In recent years I haven't paid but very little attention to it—well, I have bought some timber. The first timber we bought at 25 cents and then it went on up
287 to $4.00 per thousand feet.

Q. When did you pay $4.00 per thousand feet for it?

A. Within the last 18 months. (From February 1908.)

Q. Can you state what the price of cottonwood stumpage was 2 years ago?

A. Two dollars per thousand feet.

Q. Was that a fair market value for it at that time?

A. Yes, sir. 5 or 6 years ago $1.00 per thousand was a good price and ten years ago 25 cents per thousand was considered a good price.

Q. What particular tract was it you paid $4.00 per thousand for?

A. Right in and around Gilmore. Just in small lots.

Q. In fixing the price of that timber, did the proximity to the sawmill have any influence upon the price?

A. Yes, sir.

Q. The timber on right hand chute would have to be hauled to the chute and floated down?

A. Yes, sir.

Q. You would have the additional expense of bringing it down the river?

A. Yes, sir.

Q. Do you know what is the usual price paid for bringing it to Marked Tree after the logs are banked on the river?

A. No, sir, I do not.

Q. Did your company buy this timber on the Menasha land you have spoken of?

A. Yes, sir.

Q. Do you remember the price paid for it?

A. No, sir, I do not.

Q. When was it bought?

288 A. About two years ago.

Q. About 4 years ago did you estimate the ash on the unsurveyed lands on these four sections?

A. Yes, sir.

Q. Was all of the ash included in it?

A. Yes, sir, that included all of it. Also on section 10.

Cross-examination.

By Mr. N. W. NORTON:

Q. Did you also estimate the ash cut on the surveyed land?

A. Yes, sir.

Q. How much did you find in there on all these sections?

A. 506,088 feet.

Q. On sections 10, 14, 15, 22, 23—is that right?

A. On the unsurveyed portions of 1, 2, 10, 13, 14, 15, 16, 21, 22 & 23.

Q. How long were you in there on that inspection?

A. We were in there about ten days the first trip and went back 3 days afterwards.

Q. You went for the purpose of making this inspection for the Chapman & Dewey Lumber Company?

A. Yes, sir.

Q. When did you make that inspection?

A. December 1, 1907.

Q. You said something about Bark Camp Run, Big and Little—what do you mean by run?

A. Where there is a stream of water running out of what they call the sunk lands, where it goes out of Little River. They cut timber in there any where the water will run it out and they call them runs on account of that.

289 Q. It then is a place where you bring timber out in the water?

A. Yes, sir.

Q. In what sections do these runs exist?

A. One comes through sections 23 and 14.

Q. In what direction?

A. It runs south and I think a little east. That is what they call Big Bark Camp run.

Q. You mean it runs through the unsurveyed parts?
A. It runs through the surveyed parts.
Q. Where is Little Bark Camp?
A. It comes out of sections 15 and 22. I think it runs and empties in 21. I know it goes down through 22—secs. 15 and 22.
Q. In sections 15 and 22 I believe you say you found stumps of trees that had been cut off; what kind of tree—cottonwood?
A. Yes, sir.
Q. You say that the average was estimated?
A. Yes, sir.
Q. And that it was very large cottonwood?
A. Yes, sir.
Q. That was true whether it come off of the surveyed or unsurveyed land, is it?
A. Yes, sir.
Q. Were you on section 11 when you were on this inspection?
A. No, sir.
Q. In the secs. which you have given from which ash was taken did you include sec. 11?
A. No, sir, it lays east of the chute.
Q. Had there been any timber cut east of the chute?
A. Yes, sir, but nothing cut on section 11.
290 Q. In the course of your inspection, what kind of timber did you find outside of ash and cottonwood?
A. There is not much timber outside of ash and cottonwood, except in 22 and 23 there is some little oak and gum.
Q. Is there nothing on 13?
A. Nothing but small growth ash and cottonwood.
Q. Do you know whether cypress is a rapid growth?
A. No, sir, it is not a very rapid growth.
Q. Are you familiar with cypress as you are with cottonwood and gum?
A. Yes, sir.
Q. Do you know as much about the growth of cypress as you do about cottonwood?
A. Yes, sir.
Q. Compared with cottonwood, do you think it is nearly as rapid growth or does it grow a good deal slower?
A. It is not rapid. I would say that a cottonwood 20 inches in diameter that a cypress would not be over ten inches at the same age.
Q. Now these cottonwood trees you spoke of the size of as being 20 to 24 inches—growing to that size within the last 18 years, how old did you estimate them to be?
A. I would not think they were over 25 years old.
Q. How old did you estimate this cottonwood on the unsurveyed lands in sections 15 and 22, that had 1200 feet to the tree, how old were these cottonwood trees?
A. These cottonwood trees could grow in that country to that size in 40 or 45 years.
Q. How large would a cottonwood tree be that was 100 years old?
A. It might not be very much larger than that. After they get

a certain age, apparently trees do not grow any. These trees do not get any taller, that is the old trees, the tops are dead.

291 Q. You think then that a cottonwood tree would get as large as ever in 50 years?

A. No, sir, because some of it is 6, 8 and 10 feet through, that does not grow in 50 years.

Q. Do you think they get their growth in 75 or 100 years?

A. Yes, sir, I do. I think they are practically grown. I do not think the growth is very rapid after they reach 30 inches in diameter.

Q. Did you ever see any live tree that had so completely got its growth that it would not grow any more, and would not cover up a hack that was made on it?

A. I have seen plenty of old trees that would not heal over at all after you hacked them. You can take any young tree and it will—I mean to cut out a chip.

Q. Have you ever seen any live tree that was so large that if it was chipped it would not heal?

A. Yes, sir, I could show you some. I know of some where the chip has been taken out for 15 years. It has healed some but never healed over and never will.

Q. A cottonwood tree?

A. Yes, sir.

Q. Now you say that you know of parties buying cottonwood at 25 cents and at $4.00 per thousand feet, and that you cut over some land about ten years ago and later cut it again and when you cut it the second time, you found cottonwood trees there suitable for market when they were worth more than at the first cutting?

A. Yes, sir.

Q. You could have taken the smaller trees?

292 A. Yes, sir, we paid so much per thousand feet—I mean we paid so much for the timber—we were to take all of the timber 10 inches and over. Well of course the men would compel us us to take all of that timber; and ten years later we bought timber that was not of the size to take at that time—cottonwood.

Q. You could afford to cut trees on the second cutting that you could not have taken on the first cut?

A. Yes, sir.

Q. Everything was on a much lower scale at that time, I mean when the first cutting was done—that is true?

A. Yes, sir.

Q. Your investigation covered all of the sections (I infer) from what you say, except sec. 11?

A. Yes, sir, nothing cut on 11 at all. Eleven is in the center of what is supposed to be a Lake in the Sunk Lands.

Q. Now you have testified as to taking the section in strips and going backward and forward, and that these strips were narrow enough for you to see from one to the other, what was the width of them?

A. About 250 feet was the width of the strips.

Q. About how many times did that make you cross and recross the section? How many times did you cross and recross the section?

A. 18 or 20 times.
Q. Each section?
A. Yes, sir.
Q. Did the surveyor of your party find any corners to section 11?
A. I don't whether he did or not sir—don't know whether he found it exactly or not—O don't know whether he found the corners exactly or not. I do not know whether there was any government trees there or not. He come to something he called sec. 11.
293 I suppose he figured it and called it the corner.
Q. You took his word as to where you were all the times?
A. Yes, sir, I didn't do any measuring at all.
Q. And you understood that that was sec. 11 because the surveyor said so?
A. Yes, sir.
Q. Was there any timber on it?
A. Yes, sir, there was some timber on it.
Q. During the time you were in there wasn't it very wet? Had there not been a good deal of rain?
A. We could go anywhere we pleased in there.
Q. So far as the weather was concerned?
A. Yes, sir.

By Mr. H. F. ROLESON:

Q. Were you ever on the unsurveyed part of section 15 east of the chute, east of the northwest corner of sec. 15?
A. It corners across the chute. We were on the southwest ¼ of sec. 15.
Q. What kind of timber did you find in there at the north and the southwest of the north part of the southwest quarter?
A. Gum timber.
Q. How big was the gum?
A. Some of it was 24 inches I suppose.
Q. Did you find any oak in there?
A. Yes, sir, right at the line, on the bank of the chute.
Q. How far from the bank of the chute?
A. Maybe thirty yards.
Q. Was there any back east of that?
A. Nothing any size.
294 Q. How far out northeast and east did you find any gum timber from this bank of this chute.
A. I suppose about hardly a quarter of a mile.
Q. Did you go from the center of the section, back of the meander line straight back across the flag opening—across the flag opening, across sec. 11 over to the meander line in sec. 10, from the center of sec. 12 along the east side and back over sec. 11 to the meander line in sec. 10?
A. Yes, sir.
Q. What sort of timber did you find on Sec. 11?
A. Some cottonwood and cypress.
Q. What was the size of the cypress?
A. Most of it was small cypress. It was just pole cypress.

Q. Did you find any large cypress—a few trees.
A. Some few—there wasn't any whole lot of it.
Q. Did you find any large elm?
A. No, sir.
Q. Did you find any large maple?
A. A few.
Q. How large?
A. From 18 to 20 inches in diameter.
Q. In making these strips did you blaze a line all the way through?
A. Yes, sir.
Q. Did you blaze any trees?
A. Yes, sir.
Q. So you could see it?
A. Yes, sir.
Q. Which way did you run them north and south and east and west?

295 A. Yes, sir.

Q. Do you remember what part of it you run north and south on?
A. Yes, sir, sec. 22.
Q. And the rest of them you run east and west on?
A. Most of them—and a part of them north and south.
Q. Can you remember which ones north and south and which ones east and west?
A. Yes, sir; we run east and west on 13 and north and south in 12.
Q. How did you tell when you got to the meander line?
A. The meander line was painted red.
Q. Did you know whether this was the correct meander line or not?
A. No, sir, I didn't know. I took it for that.
Q. Who was the surveyor with you?
A. Tom Davis. He was the only one I was acquainted with.
Q. You say that you have paid all the way from 25 cents to $4.00 per thousand feet for cottonwood stumpage?
A. Yes, sir.
Q. Two years ago do you know what cottonwood stumpage was worth up there in section 15 or 22?
A. No, sir, I did not. What the timber would be worth would depend upon the cost of getting it to the mill———
Q. Tell me what cottonwood log would be worth lying in the woods in secs. 22 and 23 three years ago?
A. No, sir, I do not know. I have had no experience in rafting at all.
Q. You do not know what they would be worth on Little River at that time?

A. No, sir.

296 Q. You say that you have been in the log business in that country and have bought timber for 18 years?

A. Yes, sir; I have bought timber in there on the tram roads, on the river and on railroads.

By N. W. NORTON:

Q. If I understand you correctly this trip of yours was your first knowledge of this immediate locality?

A. No, sir, I had been up there once before.

Q. I want to know what surveyed lands you inspected and what sections you inspected?

A. A part of sections 1, 10, 12, 13, 14, 15, 16, 21, 22 and 23 and 7, in 12-8 Mississippi County.

Q. Can you tell me what kind of timber you found on the surveyed part of section 1?

A. Yes, sir. Cottonwood and cypress.

Q. Large or small?

A. Not very large. Some small ash.

Q. Did you see a flag opening up there on Sec. 1 on the surveyed part of it?

A. Yes, sir.

Q. It is rather an extension of the flag opening on the unsurveyed part?

A. Yes, sir.

Q. Some of it I believe extended up into Sec. 1?

A. Yes, sir.

Q. Have you any way of showing what the area of that flag opening is in Sec 1?

A. I do not know anything about what the area is.

Q. You were shown the meander line that had been measured?

297 A. Yes, sir, it was painted from tree to tree.

Q. Now taking the surveyed and the unsurveyed land as a whole, where did you find the largest timber?

A. On the surveyed land.

Q. On what surveyed land?

A. Secs. 22 and 23; especially the gum and oak.

Q. Then as to cottonwood, you didn't find any thing any where larger and finer than the cottonwood on the unsurveyed land in Secs. 15 and 22?

A. No, sir.

Q. Did you find any timber any where any finer and better than that on the unsurveyed part of sec. 14, on that trip?

A. Yes, sir, plenty of it.

Q. Where?

A. On 15 it was better than that. 14 has no good timber on it and never did have.

Q. In your estimate how much did you find had been cut on sec. 14—on the unsurveyed part of it?

A. 592 ash trees; 32 cottonwood trees three years and under and 50 cottonwood trees 7 years and over.

Mr. ROLESON:

Q. Did you find any gum in there?

A. No, sir.

Q. Do you remember where the meander line crosses that Bark

Camp, run about the south line of sec. 14, between 23 and 14? Did you run that line out there over to the line of 14 with the — where the meander line goes into the chute?

A. Yes, sir, the meander line crosses on a little cane ridge not very far from the half mile corner.

298 Q. There used to be an old camp there didn't there?

A. Yes, sir.

Q. Did you go directly almost east from there over on to the unsurveyed land, and on the unsurveyed land did you find a very high ridge over there?

A. No, sir.

Q. Is it not a fact that just after you cross where that meander line crosses that line, you cross a little low wet place and then on to a high ridge?

A. No, sir, you can go south of there and you will find a high ridge and east of it is the low wet land.

Mr. HUGHES:

Q. You stated in answer to a question that you could go around over this land; could you go dry shod or have to wear gum boots?

A. We wore hip boots.

Q. Would you have to wade water occasionally in getting around there?

A. Yes, sir.

Q. You spoke about having cut over land the second time after ten years, how large were the cottonwood trees you found there at the second cutting?

A. From 12 to 15 inches.

Q. On the first cutting you would leave all the trees under that size.

A. Yes, sir.

Q. Now this Menasha timber that you talked about having gotten, and then you excepted certain parts of it, what would that average to the tree do you think now, you made an estimate of this timber once didn't you?

299 A. Yes, sir.

Q. How long ago?

A. Two years ago.

Q. What is your idea now as to how much it will run to the tree?

A. I think we figured 500 feet for second growth.

Q. You say that you were on Sec. 11?

A. Yes, sir.

Q. Do you mean to say that any timber was cut on sec. 11?

A. No, sir, none cut on that section.

Q. Did you buy any timber from the Levee Board yourself not long ago?

A. Yes, sir, about 3 years ago.

Q. How much did that cost you, do you think, the cottonwood?

A. About 25 cents per thousand feet.

Q. By the Levee Board: do you mean the plaintiff in this suit?

A. Yes, sir.

By Mr. NORTON:

Q. Where was that timber you bought of the Levee Board?
A. Sec. — Tp. 9 R. 7 E.
Q. Was there much of a body of it?
A. Not a very big body of it—320 acres.
Q. Who showed it to you?
A. I didn't need any one to show it to me. I went and looked at it myself.
Q. Did any of the Levee Board men know anything about what was on it?
A. Yes, sir, they said they had men there to look at it.
Q. Did you buy the land and timber?
A. Yes, sir, it was surveyed land.
300 Q. How much did you give for the land?
A. I do not know just what I gave for it. I bought 320 acres and gave $4.00 per acre for it land and timber.

301 *Deposition of J. Riley.*

Mr. J. RILEY, for Defendant.

Q. Where do you live and what is your occupation?
A. Frenchman's Bayou, Mississippi County. I am in the timber business.
Q. How long have you been in the timber business?
A. In Arkansas, about 11 years.
Q. Have you ever been in the timber business any where else?
A. Very little.
Q. Are you in the employ of the Chapman & Dewey Lumber Co.?
A. Yes, sir.
Q. In what capacity?
A. I have charge of their logging job over there.
Q. Have you had any experience in that 11 years in estimating timber and scaling it?
A. Yes, sir, I have estimated quite a good deal of timber and scaled quite a good deal.
Q. Can you look at a tree and tell any where near what there is in it without measuring it?
A. Yes, sir, I can come very close to it. Of course I cannot tell the exact amount without measuring it.
Q. You have heard the testimony of Mr. Tolbert about this estimate of the timber on the land in controversy, did you help him make the estimates?
A. Yes, sir, I was with him all the time he was making the estimates. I was with him only on part of the sections. He and Mr. S— —— were together on most of it.
Q. Were you with him on secs. 14, 15 and 22?
A. I was with him on secs. 12, 13, 14, 15, 16 and 7 — Tp. 12 N. R. 8 E.
302 Q. You have had experience in estimating timber and in the logging and sawmill business?

A. Yes, sir, that is the way I based my estimate, according to my experience in the past.

Q. State how much cottonwood timber you found to have been cut within the differen' periods of time on each of the sections?

A. We estimated the cottonwood on Secs. 14, 15, 22 and 23. On Sec. 14 we found 592 ash trees, averaging 150 feet each and 50 cottonwood trees averaging 1000 feet cut on the unsurveyed land, and 50 trees averaging 1000 feet each on the surveyed land. On Sec. 15 we found 74 cottonwood trees averaging 1200 feet each on the unsurveyed land; sec. 22, 155 trees (cottonwood) on the surveyed part and 233 cottonwood trees on the unsurveyed part. Sec. 23 on the unsurveyed part 34 trees.

Q. In speaking of 32 cottonwood trees on the unsurveyed part of section 14—you spoke of 32 cottonwood trees on the unsurveyed portion of sec. 14, state whether or not these trees were cut in the past three years?

A. Yes, sir, they were cut within the past three years.

Q. The other trees which you mention as having been cut on the unsurveyed part of sec. 14, when were they cut?

A. Anywhere from 4 to 5 years. There were 74 cottonwood trees cut on Sec. 15.

Q. Do you mean they were cut in the last three years?

A. These were cut anywhere from 4 to 5 years.

Q. And the other cottonwood that you say was cut on Sec. 14, what is your judgment of the age of that?

A. Well, it looked to be very old, and some of it wasn't so old, I judge that it had been cut from 5 to 12 or 14 years, from the looks of it and the appearance of the stump and top.

363 Q. How do you tell the age of a tree in the woods as to how long it has been down?

A. A tree that has been cut down three or four years or longer is beginning to decay.

Q. What indication, if any, did you get from the condition of the bark?

A. I didn't get any from the bark. I have saw some cottonwood stumps that were rotten all around and the bark was still standing up right along although the stump would be rotten all inside.

Q. How much cottonwood did you say you found cut on the surveyed part of sec. 23?

A. 34 trees.

Q. Was that old or fresh cut?

A. It was old cutting, and where from 5 to 15 years old. Some of it never counted unless we could tell whether the tree was a cottonwood or not. We never counted some of it because we could not tell what it was.

Q. How much do you say was cut on the unsurveyed portion of 22?

A. 155 cottonwood trees and 233 trees.

Q. State why you set them down, 233 trees?

A. The 233 trees looked like they had been cut within the last 4 or 5 years, and the 155 trees looked like they had been cut in

from 5 to 15 years. The others were not decayed hardly any and I could tell that they had been cut within the last 5 years.

Q. Did you assist in estimating a quantity of ash that had been cut on the surveyed land around the meander line?

A. Yes, sir, on a part of it. I didn't have anything to do with 1, 2 and 10.

Q. What amount of ash was cut over the meandered line?

A. A total of 193,650.

304 Q. That is the amount you assisted in estimating?

A. Yes, sir, of course there was other ash estimated by Mr. Stayton and Mr. Tolbert—they went over it and estimated it.

Q. That was on the sections other than the three you have mentioned, 1, 2 and 10?

A. Yes, sir.

Q. What do you know about this Menasha timber that has been spoken of?

A. I helped to estimate that timber.

Q. When?

A. Two years ago.

Q. How long had you known it?

A. Quite a short time, something like a year and a half.

Q. What do you say would be a fair estimate as to the size of that timber two years ago? You say now that you have seen it lately?

A. It will run from 20 to 24 inches.

Q. What would it make to the tree on an average?

A. About 400 feet.

Q. Had you been on the land before making this estimate or was this your first trip up there?

A. This was my first trip up there.

Q. Have you had any experience in observing the rapidity of the growth of cottonwood timber?

A. I can't say that I have.

Cross-examination.

By N. W. NORTON:

Q. You mention ash that has been cut on the surveyed and unsurveyed lands, when was it cut?

A. It looked to me like it had been cut within the last

305 year. Some of the ash——

Q. You mean it was all cut apparently about the same time?

A. Yes, sir.

Q. It had not decayed like the cottonwood?

A. No, sir.

Q. And it was not large like the cottonwood?

A. No, sir.

Q. You found more ash cut then than you did cottonwood?

A. I found about the same amount. On the surveyed land 193,650 feet and on the unsurveyed land 381,750 feet.

Q. How much did you say you found on the unsurveyed land?

A. 381,75– feet.

Q. Did you work with Mr. Tolbert?

A. Yes, sir, on these three sections. I didn't on any of the others.

Q. Did you pass your judgment individually?

A. No, sir, we didn't agree. I passed my judgment on it and him his own.

Q. Did you draw a report here from what you got?

A. On the amount cut we agreed, on the age we didn't. He had his from three to seven years and I had mine from 5 on.

Q. You didn't agree on the length of time it had been cut?

A. No, sir.

Q. How many feet was cut from the unsurveyed land, according to your estimate, not including this on sections 14, 15, 22 and 23? Total number of feet of cottonwood on the unsurveyed land?

A. In the 32 trees 32,000 feet; 74 trees 88,800 feet; and in the 233 trees 279,600 feet.

Q. Did you estimate each stump in making out this estimate?

A. Yes, sir, we counted each stump.

306 Q. When you got through did you average all the stumps you saw, or did you count each stump?

A. We measured a number of stumps, not every one, and after that averaged them.

Q. You just made an estimate and averaged them, did you?

A. We made an estimate of the amount.

Q. You didn't measure every stump you found?

A. Not every one.

Q. It was just a guess then on what you thought was right?

A. Mine was based on the experience I had had in the past.

Q. Did you miss any of the big ones in measuring?

A. We measured everything, big and little and all.

Q. And when you got through you just counted up the number of trees you had seen and averaged them?

A. Yes, sir.

By Mr. HUGHES:

Q. How long did you stay there?

A. 10 days.

Q. Did you go back when Tolbert went on the 3 day trip?

A. No, sir.

Q. I will ask you to make an exhibit to your deposition of the statement showing the amount of the timber you found cut on these 4 sections of land, marked A.

A. I will do so.

307 MARKED TREE, ARK., *Jan'y 17th*, 1908.

Estimate of timber cut within three years and under from date of this report, per count and measurement by T. G. Staton, Ed Talbot and Jack Riley on the following sections in Township 12, North Range 7 East, Poinsett County, Arkansas.

Unsurveyed Portion of—

Sec. 1:			
304 Ash Trees	Average	168 ft.	51,072 ft.
Sec. 2:			
161 Ash Trees	"	150 ft.	24,150 ft.
Sec. 10: East of Chute.			
262 Ash Trees	"	168 ft.	44,016 ft.
Sec. 10: West of Chute.			
34 Ash Trees	"	150 ft.	5,100 ft.
Sec. 13:			
299 Ash Trees	"	150 ft.	44,850 ft.
Sec. 14:			
592 Ash Trees	"	150 ft.	88,800 ft.
32 Cott. Trees	"	1,000 ft.	32,000 ft.
Sec. 15:			
1140 Ash Trees	"	150 ft.	171,000 ft.
74 Cott. Trees	"	1,200 ft.	88,800 ft.
23 Gum Trees	"		34,500 ft.
Sec. 16:			
114 Ash Trees	"	150	17,100 ft.
Sec. 21: East of Chute.			
22 Ash Trees	"	150 ft.	3,300 ft.
26 Cott. Trees	"	1,000 ft.	26,000 ft.
Sec. 22:			
110 Ash Trees	"	150 ft.	16,500 ft.
233 Cott. Trees	"	1,200 ft.	279,600 ft.
Sec. 23:			
268 Ash Trees	"	150 ft.	40,200 ft.

Recapitulation.

3306 Ash Trees	506,088 ft.
365 Cott. Trees	426,400 ft.
23 Gum Trees	34,500 ft.

308 MARKED TREE, ARK., *Jan. 17th*, 1908.

Estimate of Timber cut seven years and longer prior to date of this report, per count and measurement by T. G. Staton, Ed Talbot, and Jack Riley, on the following sections in Township 12, North Range, 7 East, Poinsett County, Arkansas.

Surveyed portion of—

Sec. 14:

56 Cott. Trees	Average	1,000 ft.	56,000 ft.

Sec. 15:

90 Cott. Trees	"	1,200 ft.	108,000 ft.

Sec. 21:

East of Chute.

6 Cott. Trees	"	1,000 ft.	6,000 ft.

Sec. 22:

242 Cott. Trees	"	1,200 ft.	290,400 ft.

Sec. 23:

792 Cott. Trees	"	1,000 ft.	792,000 ft.

Recapitulation.

1186 Cottonwood Trees	1,252,400 ft.

309 MARKED TREE, ARK., *Jan. 17th*, 1908.

Estimate of timber cut within three years and under from the date of this report, per count and measurement by T. G. Staton, Ed Talbot and Jack Riley, on the following sections in Township 12, North Range 7 East, Poinsett County, Arkansas.

Surveyed Portion—

Section 1:

4 Ash Trees	Average	168 ft.	672 ft.

Section 10:

West of Chute.

223 Ash Trees	"	150 ft.	33,450 ft.

Section 12:

88 Ash Trees	"	150 ft.	13,200 ft.

Section 13:

271 Ash Trees	"	150 ft.	40,650 ft.

Section 14:			
5 Ash Trees	"	150 ft.	750 ft.
40 Cott. Trees	"	1,000 ft.	40,000 ft.
Section 15:			
32 Cott. Trees	"	1,000 ft.	32,000 ft.
Section 16:			
38 Ash Trees	"	150 ft.	5,700 ft.
Section 21:			
East of Chute.			
81 Ash Trees	"	150 ft	12,150 ft.
45 Cott. Trees	"	1,000 ft.	45,000 ft.
Section 22:			
204 Ash Trees	"	150 ft.	30,600 ft.
180 Cott. Trees	"	1,200 ft.	216,000 ft.
Section 23:			
56 Cott. Trees	"	1,000 ft.	56,000 ft.
228 Ash Trees	"	150 ft.	34,200 ft.

Township 12 N., R. 8 East, Miss. County.

Section 7:			
376 Ash Trees	Average	150 ft.	56,400 ft.

Recapitulation.

1518 Ash Trees	227,772 ft.
353 Cott.	389,000 ft.

310 MARKED TREE, ARK., *Jan. 17th*, 1908.

Estimate of timber cut Seven years and longer prior to date of this report, per count and measurement by T. G. Staton, Ed Talbot, and Jack Riley on the following Sections in Township 12, North Range 7 East, Poinsett County, Arkansas.

Unsurveyed portion of—

Sec. 14:			
50 Cott. Trees	Average	1,000 ft.	50,000 ft.
Sec. 15:			
510 Cott. Trees	"	1,200 ft.	612,000 ft.
Sec. 21:			
14 Cott. Trees	"	1,000	14,000 ft.

	Sec. 22:			
155	Cott. Trees.....	"	1,200 ft.	186,000 ft.
	Sec. 23:			
34	Cott. Trees.....	"	1,000 ft.	34,000

Recapitulation.

763 Cottonwood Trees..... 896,00- ft.

311 *Deposition of W. H. Richards.*

Mr. W. H. RICHARDS, for Defendant.

Q. What is your age, place of residence and occupation?

A. I am 64 years old, reside at Big Bay, Craighead County, Arkansas, and am a farmer.

Q. Have you always lived at Big Bay?

A. No, sir, I lived 6 miles south of Lake City, opposite what is known as Deep Landing on St. Francis River for the last 35 years on what is known as Maumelle Prairie.

Q. Were you to any extent acquainted with this country prior to the date of the building of the St. Francis Levee?

A. Yes, sir, very well. I trapped up and down the river.

Q. Do you know a place in that country known as Bark Camp Lake?

A. Yes, sir, I trapped there several seasons.

Q. When did you first go in there?

A. I reckon it was in 1869.

Q. You may state what the appearance of the country was at that time? on the Bark Camp Lake?

A. There was a good many openings in Bark Camp Lake at that time. No timber, it was all flag.

Q. How was it as compared with present conditions?

A. You can not see any one now any distance through the summer, it has growed up so with black thorn and different kinds of timber.

Q. How do the openings now compare with the size with the openings in the earliest times of which you knew?

A. There is not much openings now where there used to be just flag openings—not no openings at all, except once and a while there is a little opening.

Q. How did you travel in trapping, in a dugout or canoe?

A. Yes, sir.

312 Q. Is there any difficulty in the navigation of the runs and channels with a dugout or canoe?

A. The runs we used to run we can not use at all now, unless the water is very high.

Q. Have you been shown or pointed out to you a line that is supposed to be the meandered line of the survey?

A. Yes, sir.

Q. Can you state whether or not the lake as you originally knew it extended to this meandered line?

A. Yes, sir, in places it did.

Q. State whether or not there are places now covered with timber that you knew to be flag openings when you first knew the lake?

A. Yes, sir.

Q. What was the cha-acter of the timber that did stand in that Lake at the time you first knew it?

A. Cypress.

Q. How did it grow?

A. When I first knew the Lake there was a good deal of dead timber in it supposed to have been killed when the lands sunk. It looked like it had been good timber in time. Some times the logs stuck out and some of them were two or three feet under the ground, some cypress and some gum.

Q. That fallen timber and snags has been there ever since you could remember?

A. Yes, sir, I have been on it a little more than 30 years and it has been there ever since I could remember.

Q. And it was dead, was it, all during that time?

A. Yes, sir.

Q. Do you know what filled that Lake up?

A. Nothing unless it was sediment and vegetation.

313 Q. Has it really filled up?

A. Yes, sir, there are banks in that Lake now that were not there when I first knew it, with big willows on it.

Q. Are there places in that neighborhood where you know that land has actually been made by some process or other since you have known it?

A. Yes, sir, there are places where we used to run our boats that you could walk on the bottom—on the bed, where it used to be.

Q. Is there timber growing on that land now?

A. Yes, sir, willows and little cypress.

Q. Are the roots of these trees growing on that land above the earth.

A. Yes, sir.

Q. Can you explain how that is?

A. No, I reckon not.

Q. You know it to be a fact that land that has been built up to your knowledge has tree roots exposed in this way?

A. Yes, sir.

Q. Have you ever dug down into this soil in this country to see how far it extended below the surface?

A. Yes, sir, I have driven pumps to get water.

Q. What kind of soil did you find there after leaving the top?

A. It was very soft. You could just push the pump down 10 or 15 feet.

Q. Did you find any foreign substances in the soil or did you ever dig any with a spade to see?

A. No, sir.

Q. Did you ever find any Smart Weed or any thing of that kind under the surface?

A. Yes, sir, in putting pumps down we have pumped out black water and black trash for 3 or 4 days.

314 Q. Did you ever strike any logs buried in this ground?

A. No, sir, I never did.

Q. The description of the lake which you have given is a description from memory as you saw it?

A. Yes, sir.

Q. Do you recall any particular trees or land marks visible at the earliest times of which you knew of the lake, that could not now be seen from a given point?

A. Yes, sir, a place called Black Grove Bar with cypress trees standing on it that you used to could see for three miles and now you could not see it at all.

Q. Where is Black Grove Bar?

A. It is right on a line between Craighead & Poinsett Counties.

Q. That is away from this particular land we are talking about at Bark Camp?

A. Yes, sir.

Q. Tell us about anything that you may know of in the neighborhood of Bark Camp Lake? Do you know of any cypress snags formerly visible that can not be seen now?

A. Yes, sir, I know of some there that we used to see that we can not see now.

Q. How far could you see it in the time you spoke of?

A. About 2 miles.

Q. Now how close do you have to get to see it now?

A. Have to get pretty close to see it—within 100 or 200 yards, in order to see it.

Q. Where did that cypress stand that you have described?

A. It stood right at the end of the chute on right hand chute near Bark Camp.

Q. There is a little chanty on this land now isn't there?

315 A. Used to be, I do not know whether it is there now or not.

Q. State where you said that tree was?

A. That tree is on Lead Fork cut off, in next to Bark Camp, on the right hand side going up the cut off.

Q. You do not know the descriptions of these lands do you?

A. No, sir, I do not. I don't know anything only I know I have hunted all over it.

Q. Your trapping expeditions into that country, were they confined to this particular place, or did you hunt all over the country?

A. All over that country—Right Hand Chute, Bark Camp, up Little River and St. Francis Lake.

Q. Do the same conditions prevail as to the lower St. Francis Lake?

A. No, sir, it ain't nothing like now like it used to be.

Q. Have the same changed which occurred within your memory occurred at other places on the Lake and are they to be found in the

neighborhood where the St. L. & S. F. R. R. crosses the lower end of the Lake?

A. Yes, sir, that is all growed up. Where we could see the bank from the bend now you could not see it at all.

Q. Where is the bend?

A. Right above where the Frisco crosses—about 2½ miles from Oak Dornick. We could see Oak Dornick from the bend and now we can't see it at all.

Q. In that territory now that has filled up within your knowledge, state what the size of the timber is on some of it?

A. Some of it is 12 inches in diameter.

Q. How about the cottonwood timber?

A. Some of that is 18 inches; some of it that was little bushes when I first seen it is now 2 feet though. There — a good many of them in places too.

316 Q. Is cottonwood a rapid or slow growth?

A. Cottonwood is a fast growth.

Q. This place that is called Bark Camp Lake or the sunk lands of right hand chute is pretty close to the sunk lands of St. Francis Lake isn't it?

A. Yes, sir.

Q. How far is it across from the Bark Camp Lake to the sunk lands of the St. Francis River?

A. At some places it is not very far; and at some places it is a mile and a half or two miles, while at others it is not more than half a mile.

Q. To what extent, if any, has that country around Hatchie Coon there in the sunk lands, become exposed within your memory?

A. Why it has grown up a great deal since I first knew it. In places where we used to run a boat, we can not get through it now because it has grown up. We used to have a cut off on the lower end of Hatchie Coon and now it is grown up so we couldn't get through there at all. It has growed up in birch and cypress.

Cross-examination.

By Mr. NORTON:

Q. You say you hunted in there for 18 years?

A. Yes, sir.

Q. When was the last winter you hunted?

A. 6 years ago.

Q. And you lived in the country there all the time?

A. I lived there for about 36 years at Deep Landing there at the river.

Q. Is Deep Landing in the St. Francis River Sunk Lands?

A. Yes, sir.

317 Q. In that Bark Camp country?

A. No, sir, I camped over there every winter that I trapped at Bark Camp and right hand chute.

Q. Deep Landing is another place?

A. Yes, sir. I trapped on Bark Camp, St. Francis River, Ty-

ronza River, Tyronza Lake and deer hunted in there—didn't do anything else for a long time.

Q. You have lived all of this time at Deep Landing?

A. Yes, sir, that was the time I come there, 36 years ago.

Q. Then you know the St. Francis Lake and the sunk lands as well as any of them?

A. Yes, sir, I know all of them.

Q. Comparing this place we are talking about (you know the Bark Camp opening) comparing that with the St. Francis openings around Deep Landing, taking the whole St. Francis Lake country, which has the most timber, this over where the land in this law suit lies or the St. Francis Lake country?

A. There is not much difference in the timber on both places. There is a little more timber on Bark Camp and not much either. Hatchie Coon lake is all grown up and it was open once. I used to run a boat on Bark Camp and now you couldn't get a boat through it.

Q. There is timber in both places?

A. Yes, sir.

Q. Isn't there more in the St. Francis than there is in the Bark Camp country?

A. Yes, sir, there is a right smart of it every where in the sunk land country, Hatchie Coon Lake and Right Hand Chute.

Q. Is there a good deal of old dead cypress timber in the St. Francis Lake country?

318 A. Yes, sir.

Q. Isn't there more in the St. Francis Sunk Land country than in the Bark Camp country?

A. Yes, sir, there is a right smart of it every where in the sunk land country.

Q. How far above the place where the Kansas City Railroad crosses the St. Francis River is it up to what you call the foot of the lake on the St. Francis?

A. I couldn't tell you how far it is.

Q. About how far is it. How long would it take you to go to it in a canoe?

A. Pretty near half a day the way the river is now and the current.

Q. When you get to the foot of the lake there is a good deal of water or none at all, depending upon the stage of the water?

A. It used to be all covered, and now it takes water that covers the high banks to cover it.

Q. You have known that country in the summer as well as in the winter?

A. Yes, sir.

Q. And you have been up there in the summer time?

A. Yes, sir, I have hunted in there in the summer time.

Q. When there was practically no water at all?

A. None at all in any of the shallow places. No water at all except in the holes.

Q. You have been on Right Hand Chute, Bark Camp and Tyronza?

A. Yes, sir, when there wasn't any water except in the holes, and there was mighty little water there except in the channel and not much in right hand chute.

Q. Right Hand Chute generally has a pretty good current in it?

319 A. Yes, sir, all of it has got a good current.

Q. You think it was in 1869 when you first knew that country?

A. Yes, sir, that is my best recollection. I think I come there immediately prior to Jany. 28, 1869.

Q. That country gets dry along the St. Francis River and also over in this Bark Camp country—that depends on the season all together as to how dry it gets does it not?

A. Yes, sir, I suppose so.

Q. I mean when you get out of the channel of the river?

A. Yes, sir.

Q. What kind of stuff grows in there in these places when the water is down, what grows in it; the kind of vegetation. What sort of weeds?

A. Different kinds of weeds, smart weeds, yonkipin and others.

Q. Smart weed grows pretty rank doesn't it?

A. Yes, sir.

Q. Does it grow over in those places you have testified about as bad as it does in the St. Francis Lake?

A. Yes, sir.

Q. You mean out of the river channel?

A. I mean the lake, Bark Camp Lake. It grows in any of them like the vegetation of all the sections of the country. That smart weed grows up and falls down and makes a bank. Willows grow up on it. I can show you whole tracts that used to be open and now there is nothing but willows and thorns.

Q. Do you get as much water in that country now as when the overflows were there?

A. No, sir, not near so much. It averaged 7 feet all through that country.

Q. When the Mississippi River used to come through there we usually had more water in there the greater portion of the

320 year than there is now?

A. No, sir, it got dry then just as quick as it does now.

Q. The smart weeds would grow just as much then as they do now?

A. Yes, sir.

Q. You trapped there during the winter you say?

A. Yes, sir.

Q. And you trapped by going about in your canoe?

A. Yes, sir.

Q. The winter is the only time of year that trapping is carried on isn't it?

A. Yes, sir.

Q. When you are trapping there is plenty of water all over the country, isn't there?

Q. No sir, some times I have had to walk and drag my dugout 3 or 400 yards.

Q. You could have got along if there had been enough water?

A. No, sir. One winter you could get through one place and the next winter you could not get through there on account of the growth. It has been making that way all of the time. There are runs that you could not get through on any stage of water.

Q. What is it you call a run?

A. It is a place where you get through with a dugout on the lake in the woods. We trapped in the woods over there.

Q. When you speak of a run then you mean an opening, or an open way that you can go in a boat, run the boat with a paddle or something like that? You call it a run because it conveys the idea of a place that you can go without being compelled to drag your boat?

A. Yes, sir.

Q. Some times though when you are trapping you will have to pull your boat over these ridges or something of that sort?

321 A. I have done it, yes, sir.

Q. These ridges are smart weeds first and then willows and vegetation grows upon them?

A. Yes, sir.

Q. Did you say you had driven wells in there?

A. I have driven pumps.

Q. During trapping times?

A. Yes, sir.

Q. Was that so you could get better water than you could get out of the lake?

A. Yes, it was in October when I commenced trapping and the lake water would be warm then.

Q. When you first commenced hunting in there did these runs have names that were well known?

A. Yes, sir, some of the names I have forgotten since then. Bark Camp Lake was called that when I first knew it. It has growed up now until there is not much lake to it.

Q. And you do not know how long it had been called that before?

A. No, sir.

Q. Were there some high grounds there?

A. Yes, sir. There was some high banks around.

Q. Which way did the Bark Camp Lake run, there is a big one and a little one?

A. Well it went right up to the right hand chute, up where it runs into Little River. When Little River is up it runs into right hand chute, depending upon which stream is the highest.

Q. When you say that do you mean Big Bark Camp?

A. I mean Big Bark Camp, I do not know anything about the Little one.

Q. You don't know but one Bark Camp Lake?

A. No, sir. The Dillard Cut Off is near the chute. It
322 runs into Little River.

Q. Now you trapped for quite a number of years, where did you trap most?

A. Mostly down on the chute, on Little River, all through and up Tyronza and Tyronza Lake.

Q. Taking the sunk lands all over then you had not trapped in one place more than another?

A. No, sir, except Bark Camp.

Q. Have you ever looked at the map of all this country and studied it?

A. No, sir.

Q. How far is it now in your judgment from right hand chute that you speak of to Bark Camp Lake?

Q. There is flag upon Bark Camp Lake?

A. There used to be, but there is not much there now.

Q. You haven't seen that country at all stages of the water?

A. Yes, sir, I have seen it when there wasn't any water.

By Mr. ROLESON:

Q. How far is — from the Lake upon which you trapped around to where the river turns and comes south again—you know where the old shanty is there?

A. Yes, sir.

Q. How far is that lake from that place up there?

A. It is not very far. I couldn't tell you exactly how far it is, whether half a mile, a mile or three quarters.

Q. How far is it from the lake to that old house sitting there on the bank of the river?

A. I could not tell you.

Q. How close was that lake to this old house here when you first knew it?

323 A. I would judge about a mile

Q. There was an opening up there when you first knew it?

A. Yes, sir.

Q. In which direction from that old cabin?

A. I reckon it was east—northeast.

Q. How far was it across from right hand chute to the opening when you first knew it?

A. About a quarter to three hundred yards in some places and in some places less.

Q. What is in between right hand chute and that opening now?

A. Some cypress, willow and ash.

Q. How big is the ash?

A. Right smart ash.

Q. Is there any gum in there?

A. I don't recollect whether I noticed any gum in there or not. I just noticed that there was timber there.

Q. Is there any large cottonwood between right hand chute and that opening now?

A. Yes, sir, there is some large cottonwood.

Q. How big?
A. 2½ to 3 feet through, I guess.
Q. When did you trap up there last?
A. 6 years ago.
Q. Where did you set your traps at that time?
A. I couldn't tell you exactly where. I set them around where the flag openings were.
Q. How far was it from where you set your traps to this old shanty?
A. I couldn't tell you how far it was.
Q. Have you got any idea?
A. I don't know that I have.
324 Q. Have you been up there any in six years?
A. Yes, sir.
Q. When were you up there last?
A. Two or 3 years ago. I was up there two or three weeks ago.
Q. Now you say you do not know anything about two Bark Camps, Big and Little?
A. No, sir, I do not.
Q. Which way is the Bark Camp you are talking about from that old cabin on the river, in what direction?
A. I can not tell you which way it is.
Q. Does that Bark Camp you are talking about come out into Little River east or west of that old shanty?
A. The run I am talking about comes into the river below the old shanty. I do not know whether it is east or west.
Q. The old camp is right there, sits there in section 22, does it not?
A. I can not tell you the course the river takes or which way it runs.
Q. You know where the old cabin is and where Bark Camp run is, and have trapped in there ever since you can remember, and you can not tell me whether it is east or west of that old cabin?
A. It is east of it I suppose.
Q. You don't know which way it is?
A. No, sir, I can not tell.
Q. How wide is that run?
A. I can not tell you how wide it is.
Q. Is it 30 50 or 100 feet wide?
A. Some times it is ten feet wide and some places wider.
Q. What sort of a looking stream is it?
A. Some places it has got banks and some places it has
325 not anything of the kind.
Q. Where does it come into Little River, you say you do not know?
A. No I don't know.
Q. How far did you go from the time you left Little River until you got to the opening? How far was it from the river to the opening?
A. I can't tell you how far it is. Not much opening there now.

Q. How far was it 6 years ago?
A. It was pretty well growed up 6 years ago.

326 *Deposition of Alf Rector.*

ALF RECTOR, called for Defendant-.

Q. What is your age, place of residence and occupation?
A. I am 71 years old, reside at Lake City and am a trapper and hunter.
Q. How long have you lived in that country?
A. Ever since 1839, in Mississippi County and through that country off and on.
Q. In your hunting and trapping have you hunted and trapped in the territory known as Bark Camp Lake?
A. No, sir.
Q. Have you visited Bark Camp Lake and been through there?
A. Very little.
Q. When did you first go there?
A. I went through there one trip along about 1880.
Q. Was that the first time you had ever seen Bark Camp Lake?
A. It was the first time I ever went on it.
Q. Was it any bigger then than it is now?
A. I have never been on it since.
Q. Did you go and look around the land the other day?
A. I went upon the land but never went through Bark Camp.
Q. Have you been through there since that time?
A. No, sir, not since I went up there to look at the meander line.
Q. Do I understand you to say that you have never been in that territory but one time?
A. I never went up through Bark Camp.
Q. You do not know anything about it at all then?
A. No, sir.

327 *Deposition of John Varner.*

JOHN VARNER, called for Defendant-.

Examined by Mr. ALLEN HUGHES:

Q. State your name, age, residence and occupation?
A. John Varner, age 56 years, live in Craighead County, Arkansas, in the south part of the county on the St. Francis River and am a farmer and bee raiser. I have a farm in the country adjoining the sunk lands of the St. Francis River and have lived there all my life.
Q. To what extent have you been familiar with the country known as the Bark Camp Lake?
A. That is there east of the Right Hand Chute—Bark Camp overflow. I have hunted in there off and on all of my life. For several winters I trapped in there.

Q. When you first remember the Bark Camp overflow what was the appearance and character of it?

A. It was flag openings and some willows.

Q. Any open water?

A. Yes, sir, some open water,—a great deal.

Q. What about the sizes of the openings at that time in Bark Camp overflow compared with the present sizes?

A. I don't know exactly, as I never paid enough attention to it. I am satisfied it was a mile or two wide when I first knew it.

Q. How is it now?

A. It is growed up with brush. I don't suppose it is half as large now as it was when I first knew it.

Q. How has it grown up?

A. It has grown up from the outside next to the timber.

Q. When was the last time you saw it?

A. About 2 years ago.

Q. Can you tell the character of the timber?

328 A. Yes, sir, that next to the edge is larger. The timber grows smaller as it goes toward the center.

Q. Are you familiar with the lower end of the St. Francis Lake sunk lands?

A. Yes, sir, I have been on it all of my life and steered a steam boat on it a part of the time.

Q. What was the appearance of the lower end of the St. Francis Lake from Oak Dornick on down since you can first remember it.

A. When I can first remember it it used to be very open.

Q. What can you say as to the size of the openings when you first saw it?

A. It used to be called 7 miles from the foot of Lead Fork to the foot of the lake, and something near a mile wide in places and there was open water from the foot of the lake to Lead Fork, that is above the bend at Oak Dornick. It was 7 miles from the foot of the lake up to Lead Fork.

Q. What was the character of that region covered by that 7 miles when you first knew it?

A. It was open water.

Q. What was the character of it the last time you saw it?

A. It is pretty much growed up. There is nothing open now except the channel. All the other parts are grown up in willows.

Q. Do you know where Oak Dornick is?

A. Yes, sir, I have camped, hunted and shot ducks there many a time.

Q. Looking from Oak Dornick toward right hand chute, when you could first remember it, how far could you see looking in that direction?

A. A mile or further.

Q. The last time you saw it how far could you see?

329 A. Just across the channel. It is all growed up in willows now, close up to the channel of the river. The channel is a half mile off from Oak Dornick now. You can not stand in the

channel now and see the houses at Oak Dornick. You can not see over three or four hundred feet away from you out there now.

Q. And when you first knew it you could see from Oak Dornick to the foot of the lake, that is when you can first remember?

A. Yes, sir, I could see out over to where it makes the channel, something over a mile.

Q. Can you see that far now?

A. No, sir.

Q. You know where Sand Slough is up there do you?

A. Yes, sir.

Q. Do you know where the railroad dump crosses Sand Slough?

A. Yes, sir.

Q. How far can you see from Oak Dornick down into Sand Slough where it crosses the railroad dump?

A. I don't know. It used to be a heap opener than it is now. When I went through there last winter I liked not to have got through on account of the bushes.

Q. What is the character of that growth growing in there now?

A. It is willows, thorns, elbow bushes, cypress and stuff.

Q. How is that growth building up, from the channel or from the bank to the channel?

A. It seems to grow from the bank to the channel. The largest timber is toward the bank.

Q. Is that condition of growing up in willows and other growth a general condition throughout that sunk land country?

A. It is growing up that way and has been growing up all the time. It is filling up with flags, willows, smart weed and other vegetation of all kinds and is about to take the lake now.

330 Q. Have you had occasion to observe how rapidly cottonwood grows in that bottom over there?

A. Yes, sir, I have.

Q. State what you know about the rapidity of the growth of cottonwood trees?

A. I cannot tell exactly. I know a place that was in cultivation in 1882, and last year they cut saw stocks off of it. The overflow came and washed away the fences in 1883, when it was in cultivation, and last year they cut cottonwood off of it for saw stocks. That was on high land.

Q. About what size timber do you say it was?

A. Something about 2 feet through.

Q. Now what about the cottonwood that grew in your brother's yard, the age of it?

A. It has growed since that time. The place was settled in 1882, the trees has growed since that time. I don't know what year it was put out. It was on high land.

Q. Does cottonwood grow much faster on high land than it does on low land?

A. I have always heard that it growed faster in the swamp but I never paid enough attention to it to know.

Cross-examination.

By Mr. N. W. NORTON:

Q. What section do you live on?
A. Section 13, township 13 north range 6 east.
Q. That is on the west bank of the lake?
A. I am on the east side of the lake.
Q. How far is that from the foot of the lake?
A. I guess about 20 miles.
Q. How much have you been down there in the last 15 or 20 years?

331 A. I am there every year more or less. I used to steam boat on that river all the time until about 8 years ago. And then I have hunted, trapped and fished there. I staid nearly all last summer.

Q. You have fished a good deal during the last few years?
A. Yes, sir, a good deal.
Q. How long is it since you visited in that Bark Camp country?
A. It is about a year ago since I was there.
Q. How far is that from the right hand chute of Little River?
A. It is right in between them.
Q. Here is a map here, that I want to show you. Can you show me, looking at this map, where that Bark Camp lake is in, what section?
A. I do not know but it should be somewhere about there in the north west quarter of sections 22 and 15—15.
Q. Do you know where that old cabin is up here on the river, an old cabin about 3 miles below Lepanto on the river there?
A. I might, if I knowed the name of it, there is so many up there.
Q. The cabin between Lepanto and old man Peter High?
A. About 8 miles from the chute.
Q. How far is it from where you go from old High farm over to Little River.
A. I suppose about 3 miles. It ain't over that. That would be my guess at it.
Q. How far is it across there in that Bark Camp country from the right hand chute to Little River?
A. From the right hand chute to Little River through Bark Camp is right at 3 miles I would think.
Q. How many Bark Camps are there over there?

332 A. I know of one landing on the St. Francis known as Bark Camp. It is only a landing.

Q. On the east bank of the right hand chute, what sort of timber grows on the east bank?
A. Willows, thorn, cypress, that is, a little pole cypress. Some cottonwood, mostly swamp timber though. I do not know any thing about the sections. I can not tell anything about them from this map. It may be in the right shape but I do not know.
Q. How close does right hand chute come to Little River?
A. I do not know sir, how close.
Q. How much did you ever trap over in there?

A. I have trapped off and on in the chute and in that Bark Camp country ever since I was 25 years old.

Q. Several winters?

A. Yes, sir.

Q. How long has it been since you trapped down there?

A. I can not tell exactly when I trapped in there last.

Q. Well, about how many years ago?

A. 6 or 7 years ago since I was there.

Q. Where did you set your traps at the time with reference to Bark Cam-?

A. All over Bark Camp, in first one place and then another.

Q. How wide is Bark Camp opening?

A. I do not know, I never measured it.

Q. About how wide?

A. Why it is a quarter wide or something like that.

Q. What sort of timber grows on the west side of it, between that and the right hand chute?

A. Well, I just now told you, small pole cypress, willows, cottonwood and elbow brush.

333 Q. Have you been over that opening out west of the right hand chute in the last 6 or 7 years?

A. Yes, sir.

Q. Is it not about a mile and a half from that opening to the right hand chute, through the woods?

A. No, sir, some places it is not over 200 yards and some places it is further.

Q. Do you say that there in between the right hand chute and the Bark Camp opening that you have been falking about that there is no big timber?

A. No, sir, there is no big timber in there. It's growed up in willows and thorns.

Q. Isn't there cottonwood in there from 10 to 13 feet in circumference?

A. No, sir, I do not know of it.

Q. Isn't there maple in there 11 feet around?

A. If it is there I do not know it. When I was in there I was not looking for timber, I was after catching coons. There might have been big timber in there but I didn't notice it.

Q. Do you know where the Government meander line runs there?

A. No, sir, I do not know any thing about the lines in there.

Q. How far is it out from the opening out to Bark Camp—out to Little River?

A. I do not know. I have been there several times but I can not tell you. It is not but a little ways.

Q. About how far?

A. If I was going to guess it I would say about half a mile. In some places it is further.

Q. Have you been over that opening out from the chute into Little River for the last 6 or 7 years?

334 A. No, sir. It has been 12 or 14 years since I have been through to Little River. I was at Bark Camp about two years ago.

Q. You say down on the lower St. Francis the country has grown up some in willows in the last 20 years?

A. Yes, sir, it has.

Q. How long ago do you say it has been since you first saw the country?

A. I cannot tell you. I have been there ever since I was 18 or 20 years old.

Q. You have been there about 25 years?

A. Yes, sir.

Q. 25 years ago, was there any willows down there on the lower end of the lake?

A. Yes, out next to the big timber.

Q. Was there any banks and green trees on them in spots?

A. There might have been a few but awful few.

Q. Wasn't that all grown up in willows there 25 years ago?

A. No, sir, it was pretty near a solid opening.

Q. What grew in that opening 25 years ago?

A. It would be grass and cockle burrs and such as that. I have seen them make hay in there after the lake would go dry. After the lake went dry the grass grew in it.

Q. Was there a road running up there from the foot of the lake to Oak Dornick and the Purcell slough country?

A. Yes, sir.

Q. That was there 25 years ago?

A. Yes, sir, there was a road there 25 years ago.

Q. Are those willows there near Oak Dornick any larger now than they were 25 years ago?

A. I suppose they are larger.

335 Q. How much larger?

A. I can not tell you.

Q. Isn't it fact that 25 years ago there were willows growing on those dornicks as large as they are now?

A. I can not say I do not know.

Mr. HUGHES:

Q. You do know that there are a great many more of them?

A. Yes, sir.

Q. You said awhile ago that it was three miles from right hand chute to Little River? Did you mean from the upper end of it?

A. He asked me how far it was from right hand chute to Little River and I said 3 miles.

Q. You didn't mean from the lower end of the opening to the river?

A. No, sir.

336 *Deposition of Jones Mangrum.*

JONES MANGRUM, called for Defendant.

Examined by Mr. HUGHES:

Q. State your name, age, residence and occupation?

A. Jones Mangrum, 48 years old, reside at Mangrum, Ark. and am a farmer.

Q. How close do you live to the Sunk Lands country?

A. I live in about a mile of the St. Francis.

Q. How long have you lived in the neighborhood of the St. Francis, Little River and the sunk lands?

A. About 44 year-. We went there in the latter part of 1865 and have been there ever since.

Q. To what extent, if any, are you familiar with that country and have you been during that period *that period* with Bark Camp overflow, and the whole country?

A. I have a right smart information about that. It is all low. I have trapped and hunted in there and have hunted and drove cattle through there. I have been up there a good deal and have been over the woods.

Q. Speaking of the bark camp country, where is what you call Bark Camp and the Right Hand Chute?

A. It is below us a good deal, a right smart little distance below us. It is not far from what we call the Dillard cut off.

Q. The opening is in between the right hand chute and Little River?

A. Yes, sir.

Q. What they call Camp Bark overflow, when you can first remember, what was the appearance of that overflow?

A. Well, there was an opening there then.

Q. About what size was the opening there, if you remember?

337 A. Two and a half or 2 miles long, I guess it must have been and I would not suppose it was over half a mile wide, just from the looks of it.

Q. What was out in there?

A. The growth of timber——

Q. What was in the open part of the water.

A. Water was the principal thing.

Q. When you first knew it it was principally water?

A. Yes, sir, I could see a long ways across it.

Q. When was the last time you saw it?

A. It has been 6 or 7 years ago.

Q. When you last saw it what was the appearance of it?

A. It was a good deal different. It had growed up with thorns and elbow brush and stuff like that and a good many willows, switch willows and larger. All the willows in there when I first saw it were not higher than your head or probably as high as this ceiling.

Q. When you last saw it how was it?

A. It was larger, some of them 3, 4, 5 and 6 inches through.

Q. What would you say of the opening when you last saw it as compared with the first time you saw it?

A. It didn't look as though there was a great deal there the last time I saw it.

Q. About what was its average width the last time you saw it?

A. If I was going to guess I would say it was about half a mile wide the first time I saw it and it has grown up until it is now very

small, not over 200 or 300 yards, I guess 200 yards would cover the width of it.

Q. Has that growth been from the middle to the sides or from the sides to the middle?

A. It has been from the sides.

Q. Of the original opening of Bark Camp, has that been
338 toward the middle or from the middle toward the land?

A. It grew out toward the middle of it. There are a good many smart weeds and flag in there—lots of flag in there.

Q. Where is the heavier or thicker timber? Is that on the sides or in the middle of the openings?

A. The heaviest timber is on the sides of the opening. It is growing out toward the center all the time.

Q. You are also familiar with the lower end of St. Francis Lake are you not?

A. Yes, sir.

Q. Do you know where Oak Dornick is?

A. Yes, sir.

Q. When you can first remember the lower end of the lake, from the lower end of the lake up to Lead Fork, what was the appearance of the country there—the opening?

A. There was nothing in there but opening. You could hardly see anything except a few old stumps.

Q. Were those old stumps the ones that sunk there with the earth quake?

A. Yes, sir. I was acquainted with all of that in there.

Q. How long was that opening supposed to be from the lower end of the lake up to Lead Fork?

A. It comes in just a little above Lead Fork.

Q. What was the length of it?

A. About 7 miles.

Q. What was its average width?

A. About 2 or 3 miles wide, that is the lake part of it. It would not be that wide across the channel.

Q. When was the last time you saw that territory down there from the lower end of the lake up to Lead Fork?

A. Last July.

339 Q. What was the appearance of that territory then as compared with the time you first saw it?

A. I hardly knew the place at all. I couldn't hardly tell you. It was growed up in willows, even out in the river was growed up in willows, and there were little banks and bars there.

Q. How far is the channel of the river from Oak Dornick?

A. It is about 200 or 300 yards I reckon.

Q. Can you see the channel of the river now from Oak Dornick?

A. You might see it in some places I suppose but you could not see it in some places for the willows and dornicks. You might see it in some places but I don't believe you could hardly at all.

Q. When you first knew that country how far toward the foot of the lake could you see Oak Dornick?

A. A long ways down there—you could see away down there

almost as far as the club house, just a little piece above the foot of the lake.

Q. How far is that do you think?

A. About 3 miles I guess. It is further than that—I could see down there at that time.

Q. How far could you see down into the mouth of sand slough when you can first remember?

A. Sand Slough comes up there right at the foot of the lake or river, that is what we call Sand Slough. You couldn't see down that very far because it makes a crook. It is down below where the first club house was.

Q. Can you see—looking across the country—across the channel from Oak Dornick toward the mouth of right hand chute, how far could you see across there when you can first remember?

A. Well, I do not know, a good long ways.

Q. It was a good long opening?

340 A. Yes, sir.

Q. How far can you see through there now?

A. You can't see through there at all now it is all growed up.

Q. Have you noticed the sizes of the willow growths in that territory?

A. Yes, sir.

Q. How does it grow? What can you say with reference to proximity of the channel and the size of the timber? Where is the biggest timber. Next to the channel or next to the bank?

A. Next to the bank.

Q. What do you know about the growth of a cottonwood tree whether it is a rapid or slow growth?

A. Cottonwod is considered a rapid growth.

Q. Do you call to mind any particular trees?

A. Yes, sir, there are some on the high ground in my field and they have growed up from cottonwood sprouts that come up in my field and they are from 3 to 6 inches through and there are some there about 18 inches through that have growed there in that last 14 years.

Q. And that is on high ground?

A. Yes, sir, right in my field.

Q. What do you know about the rapidity of the growth on this high ground as compared with the growth on lower or wet grounds, which is the more rapid?

A. I don't know that I could tell you much about that. I notice that they grow very rapidly though. That is pretty low ground these are on but it is in my field.

Q. Are there any of those cottonwood sprouts in that Bark Camp country?

A. Yes, sir, a few of them, a good many of them in spots.

Cross-examination:

341 Q. These cottonwoods you are talking about had the trees and everything cut away from them?

A. Yes, sir.

Q. They would naturally grow faster than if left in a cottonwood thicket?

A. Yes, sir.

Q. You didn't measure them?

A. No, sir.

Q. How large do cottonwoods generally get before they quit growing?

A. I do not know. I have seen some very large ones.

Q. Haven't you known cottonwood trees all of your life and that they are not any larger now than they were when you first saw them?

A. Yes, sir.

Q. When a cottonwood gets 4 or 5 feet through, it sometimes don't get any bigger?

A. Yes, sir, it stops growing or grows so slow that we can not tell it by looking at it.

Q. You lived at Mangrum landing?

A. Yes, sir.

Q. What year did you carry the mail down to Marked Tree?

A. I carried it a part of two years.

Q. What year was it do you remember?

A. I think in 1885 and 1886.

Q. That was after the railroad was built?

A. Yes, sir, the railroad had just come through there. They were just putting the dump up there then. I think it was about that time.

Q. Do you remember when the old steamboat called the "Advance run up there?

342 A. Yes, sir, my father owned it a part of the time.

Q. You were a young man at that time?

A. Yes, sir, about 19 or 20 years old.

Q. Do you remember in 1881 and 1882 the steam boats used to run up there, up the lake and on up to Old Town landing?

A. Yes, sir.

Q. After they got into the foot of the lake, it wasn't but a mile or two until they got into the willows and had to take different routes to make their way through there?

Q. They had willows all through there. But they had water enough to run on. The channel was wide enough. We used to run rafts through there 50 to 200 yards long.

Q. Wasn't there willows all around in it?

A. There were willows all around but we run through the willows. There were willows there but there was a big opening in the middle of it.

Q. Didn't these willows on the east side of it come practically out to the channel of the river on the east side. Didn't they go clear out to the channel?

A. In spots it did but then it was open water.

Q. Now on the west side you say there were old stumps out in the opening?

A. Yes, sir.

Q. Was there in the opening at that time plenty of willows?
A. Yes, sir, but they were very small.
Q. On some of these dornicks these willows were as large then as they are now, were they not?
A. No, sir, they didn't look that way to me. I was there last July and they looked 4 or 5 times larger then than they did. I hardly knew the place.
Q. It has all grown up that way in the last 5 or 6 years?
343 A. Yes, sir.
Q. Back there 25 years ago, did that country up there where all those stumps were, did it go dry in the summer time?
A. No, sir.
Q. Did it go dry in the summer or fall?
A. No, sir, not exactly dry. There was water there all the time.
Q. Didn't they cut a road out there?
A. Not that I know of.
Q. Wasn't there a wagon road running along there up on the bank?
A. There was a wagon road there. There was a road there on the east side of the lake.
Q. On the west side of the river, wasn't there a road?
A. I don't remember about that.
Q. Do you remember a fellow by the name of Reynolds that had a little place about a couple of miles north of Oak Dornick in 1881 or 1882, on the west side of the Lake or opening?
A. I don't remember him.
Q. Do you remember the old house there?
A. Yes, sir.
Q. Wasn't there a road running from Purcell's down on the west side of the opening to Oak Dornick and on down to the foot of the lake?
A. I don't remember it.
Q. Didn't it go up through that opening there for a mile and a half or two miles up there?
A. I don't think it did. If it did I don't remember it. There was a road on the other side of the river.
Q. Which way did that road go on the west side of the river?
A. I don't know nothing about it.
Q. You didn't know all about that country 25 years ago?
344 A. No, sir, I did not. I know that the roads run up the east side of the lake all right.
Q. Now, going back to this bark camp country, how far is that opening you have been talking about to the right hand chute?
A. From the nearest point,—I really don't know, I would not think it was over a mile or something like that.
Q. What sort of timber grows in between that and the right hand chute?
—. A few cottonwood and something like that.
Q. Is there any sweet gum in there?
A. A few trees but not many.

Q. Any maple in there?
A. Yes, sir, a few maple.
Q. Elm and ash?
A. Yes, sir, little ash trees.
Q. Isn't it a fact that going from right hand chute right back east to that flag pond that is over there, that it is heavily timbered?
A. No, sir, I do not believe it is heavily timbered. It has some small timber.
Q. Here is a map I want you to look at and tell me about these places?
A. I don't know a thing in the world about the map.
Q. When was the last time you were down Bark Camp overflow?
A. 6 or 7 years ago.
Q. What was growing out there then?
A. Just little willows, flags, smart weeds and a good deal of thorn.
Q. Were you down there in the fall of the year?
A. Yes, sir, and the spring too.
345 Q. What sort of a country is it in the fall, dry or how?
A. There is a good deal of water out there at all times. It hardly ever goes dry in the channel.
Q. When do you say that it goes dry, if at all?
A. I don't know that I could tell you. I know when I was there there was water in it.
Q. Does it go dry in the fall?
A. I never saw it when it was dry all over.
Q. You don't mean to say that it don't get that way?
A. No, sir.
Q. There are willow bushes out there in the middle?
A. Yes, sir.
Q. Is there any cypress out there?
A. Yes, sir, a little cypress growth.
Q. Would you say there was any cypress out there scattered around through there that was 13 feet around above the water line, w-ere the mark of the high water is?
A. No, sir, I don't believe there is.
Q. Do you think there are willows out there as much as 8 or 9 feet around?
A. No, sir, I do not believe there is. I never saw them.
Q. This bark camp you are talking about is open over there isn't it?
A. No, sir. It is open probably a mile and a half wide and 2 miles long.

346 *Deposition of Francis Varner.*

FRANCIS VARNER called for Defendant.

Examined by Mr. HUGHES:

Q. State your name, age and place of residence and occupation?
A. Francis H. Varner, 66 years old, farmer and live in Craighead County near Buffalo Landing.
Q. How long have you known the St. Francis, Little River and the Sunk Lands?
A. All my life.
Q. How frequently have you seen this country, the lower end of the Lake and Bark Camp?
A. I can't say, right often though.
Q. Do you know where Bark Camp overflow is?
A. It is between Little River and Right Hand Chute. Makes out of Right Hand Chute and goes into Little River.
Q. When you can first remember Bark Camp overflow, what was its appearance?
A. It was open water.
Q. What was the size of the opening?
A. It was 2 miles long and a half a mile wide or something like that. I haven't been there in 10 or 12 years.
Q. When you last saw it 10 or 12 years ago, what was its appearance?
A. It had growed up powerfully in flags, smart weeds and small trees.
Q. How has it filled up, from the sides toward the middle or the other way?
A. I think it was from the sides of the opening toward the middle.
Q. Where is the heaviest timber growing in there, towards the edges or in the middle?
347 A. Toward the edges.
Q. When you last saw it what was the size of the opening?
A. Well, sir, in visiting a thing that way you don't notice particularly. The last time I was in there I was after cattle and I noticed it had growed up considerably. I can't state what the size of it was. Most of the time I was running cattle through there. In the Spring of the year when it was full of water I never saw it.
Q. It has grown up a great deal?
A. Yes, sir.
Q. With regard to the lower end of St. Francis Lake, you are more familiar with that than you are the Bark Camp country?
A. Yes, sir.
Q. What was the appearance of the lake from the lower end to Lead Fork the first time you noticed it?
A. It had the appearance of an open lake.
Q. What was the size of that opening, length and breadth?

A. It was a mile wide and I believe they called it 7 miles from the foot of the Lake to Lead Fork.

Q. You say that that was a big opening?

A. Yes, sir, maybe there was a little willow, but nothing to amount to anything in it, maybe a little cypress once in a while. You could see as far as you wanted to nearly.

Q. How far could you see?

A. From Lead Fork to the foot of the Lake.

Q. How far is that?

A. It is two and a half miles from the foot of the Lake to Oak Dornick.

Q. When was the last time you were in there?

A. The first of last July (1907.)

Q. How far can you see across there now?

348 A. You can't see any where in there now.

Q. What interferes with your vision?

A. Willow trees have grown up so thickly in there. I just run down there one evening in a boat. I went down in a little gasolene boat to Marked Tree, and I hardly knew the place. I used to pilot a boat down there a good deal.

Q. How far is Oak dornick from the channel?

A. I reckon it is half a mile.

Q. When you could first remember could you see the channel from Oak Dornick?

A. Yes, sir, nothing in the way.

Q. Looking across the channel toward right hand chute and Bark Camp country, how far could you see?

A. At least a mile.

Q. How far can you see now through there?

A. 50 to 100 yards. You cannot see out of the channel, at least I could not. You could not see Oak Dornick from the channel.

Q. How has that growth been, from the channel out toward the edge or from the edge out toward the channel?

A. The biggest of it is next to the edge.

Q. The biggest of the timber is next to the edge of the old opening?

A. Yes, sir.

Q. About the mouth of sand slough there when you can first remember it, what was the character of it?

A. It was open. Some bushes but not many.

Q. How is it now?

A. It has grown up with bushes so you could not walk through it hardly.

Q. How has it grown up?

349 A. In willow and thorn bushes and smart weeds and other vegetation.

Q. Is that growing up in thorn, willows and other vegetation is that general throughout the sunk lands or is it peculiar to the locality you mention?

A. I think it is growing up the same in all the sunk lands. All

of the sunk lands I see are growing up and filling up, filling up with the growth on the land.

Q. That is what you mean by filling up?

A. Yes, sir. I think it is filling up all along.

Q. What sort of vegetation besides trees grow in that country?

A. Flag and smart weeds. Smart weed beds don't wash away in the overflows much. They stay there.

Cross-examination.

Q. Where does the smart weed grow mostly?

A. All over the low lands and lake places.

Q. It grows out in the open don't it?

A. Yes, sir.

Q. It doesn't grow up in the willows?

A. Yes, sir, the willows grow up and the smart weeds too.

Q. After the willows get to be of any size the smart weed don't grow any more do they?

A. No, sir; don't suppose so, I don't know.

Q. You knew that lake 25 or 30 years ago?

A. Yes, sir, I knew it 40 years ago. I used to run a steamboat on it 25 or 30 years ago.

Q. You could not run a steam boat on it except in high water could you?

A. No, sir.

350 Q. Didn't you used to run over the tops of the willows?

A. I never did except when the willows were of no height.

Q. You used to do that on the foot of the lake?

A. Yes, sir.

Q. You used to run over the tops of the young willows in times of high water?

A. Yes, sir.

Q. Was that out close to the channel?

A. Right along the edge of the channel.

Q. You say there were some young willow sprouts out there 20 years ago?

A. Yes, sir. Some few.

Q. Wasn't there always some young willows along there, more or less as far back as you can remember?

A. Yes, sir, some few. But nothing like it is now.

Q. Isn't it a fact that the overflow has been kept out of the lake to a considerable extent for the last 12 or 13 years on account of the levee?

A. Yes, sir.

Q. You don't have as much water in there as formerly?

A. No, sir.

Q. These willows have had a better chance to grow since the levee has been built?

A. Yes, sir.

Q. Now in the summer time and in the fall, the lower end of that lake gets dry except in the channel?

A. Yes, sir.

Q. They used to cut hay out there?
A. Yes, sir, I heard they did, I never did.
Q. Now some old dead stumps used to stand in there where
351 the land sunk?
A. Yes, sir.
Q. Once in a while you see a cypress and some times a willow on the banks?
A. Yes, sir.
Q. Now why do you call that Bark Camp country the Bark Camp overflow?
A. We call them all overflows, that is the name we have for them.
Q. Do you still go into Bark Camp from right hand chute?
A. Yes, sir, I reckon so.
Q. Is that at the north end of it?
A. Yes, sir, that is the north end of the overflow that comes out of right hand chute. I never went in there in a boat in my life.
Q. Now then, right hand chute bears out west after that don't it, runs out southwest?
A. Yes, sir.
Q. It leaves a pretty high scope of country between that opening and the right hand chute—2 or 3 miles?
A. Yes, sir.
Q. A couple of miles across it?
A. Yes, sir.
Q. What sort of timber grows in there?
A. I never was in there.
Q. That opening gets dry in the fall?
A. Some falls it does and some it does not.
Q. You say you have rode all around it?
A. Yes, sir, I have. I have seen the right hand chute dry a many a time.
Q. Did you ever ride all over Bark Camp?
A. Yes, sir.
352 Q. Is there pretty heavy flag in there?
A. Yes, sir.
Q. Did you meet with any flag or smart weeds?
A. Yes, sir. I don't know how it is now, whether the smart weeds took the flag or the flag the smart weed.
Q. Now the first time you knew that lake was there any little cypress growing out in it in places?
A. Yes, sir.
Q. And once in a while willows?
A. Yes, sir, once in a while.
Q. It wasn't solid open water?
A. There were cypress and willow once in a while.

By Mr. HUGHES:

Q. When you first knew that country down there, the sunk lands, you said something about there being old hardwood logs and stumps in the lake?
A. Yes, sir, they were there when I first knew it.

Q. These were said to have gone down with the earth quake?
A. Yes, sir.
Q. That is the tradition all over that country?
A. Yes, sir.
Q. And the same way with the old cypress snags down there?
A. Yes, sir.
Q. All those trees standing were in a slanting position?
A. Yes, sir, they all slanted in one direction.
Q. Since you have heard of this country and since you have known it, the lands which you say you have been over and hunted upon, has it been your understanding that the reason they were called the sunk lands was because they sunk in the earth quake?

A. Yes, sir. I have seen hickory logs in there when I was
353 a boy. Also oak logs.

Q. State whether or not you have found any of those old oak logs after the dirt washed off in any of the places?
A. No, sir, I never noticed any any where.
Q. What about the growth of cottonwood timber, the ages and size of the trees?
A. I never noticed a great many. In 1883 on my farm the overflow washed the fences away, and where it had been tended, and about a year ago they cut cypress trees down where it had been tended in 1883—I mean cottonwood trees—and sold them for saw stocks, some of them were a foot and some of them a foot and a half around.
Q. What about the shade tree (Cottonwood) that grew in your yard, how old was that?
A. It was set out there in 1882. I cut that down 4 or 5 years ago and it was 18 inches through at the butt.
Q. That was up on the high ground?
A. Yes, sir.
Q. What is your information as to the comparative growth of it on high ground and wet or low ground?
A. I don't know. It is wet ground in there. It is not like this ridge (Crowley's Ridge). It is all wet ground in the bottom there.

By Mr. NORTON:

Q. Trees grow better where it don't overflow, don't they?
A. I should think it would.
Q. Was that cottonwood tree there by itself or was there another tree close by it?
A. No other tree close to it at all.

Q. About how large does a cottonwood tree grow?
354 A. Four or five feet through.

Q. Isn't it a fact that you yourself know of cottonwood trees that were four or five feet through when you could first remember and that they have been that way ever since you could remember?
A. Yes, sir, I think so. My idea is that a cottonwood tree will get about a certain size and then it will quit growing much.
Q. Some grow very large and some medium and stop growing?

A. Yes, sir.
Q. They grow very rapidly?
A. Yes, sir.
Q. They grow after they get started an inch a year?
A. I think so.

355 *Selection as Swamp Lands.*

1907—28,856. S. W. T.

DEPARTMENT OF THE INTERIOR,
K. GENERAL LAND OFFICE,
S. W. T. WASHINGTON, D. C., *February* 27, 1907.

Address only the Commissioner of the General Land Office.

Chapman and Dewey Land Company, Kansas City, Missouri.

SIRS: I am in receipt of your letter of Feb. 15, 1907, in which you call attention to certain pencil notations on the copy of Arkansas approved swamp land list sent you with my letter (K) of Feb. 11, 1907.

The original selection list of swamp lands in T. 12 N., R. 7 E. gives the area of the township as 14,329.97 acres, and that amount was also given in the approved list. Section 16, which passed to the State under the school grant, contains 514.30 acres, and as such lands were not granted under the swamp land laws, the area of Section 16 was deducted from the total of the township, leaving 13,815.67 acres, which amount was accounted for in the patent. The subtraction, or change, in the figures on the approved list was made in pencil and the certified copy sent you must follow the original.

The certified copies are herewith returned.

Very respectfully,

G. F. POLLOCK,
Assistant Commissioner.

R. C. L.

356 M. L. 182,568. S. W. T.
K.
R. C. L. 4–207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February* 11, 1907.

I hereby certify that the annexed papers, being copies of (1) Arkansas Swamp Land Selection List "A", dated Sept. 22, 1852; (2) List No. 1 Helena series, approved May 11, 1853, and (3) Swamp Land Patent No. 1, dated Sept. 27, 1858, in so far as they relate to T. 12 N., R. 7 E.,—are true and literal exemplifications of the original lists and of the record of the patent in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

W. A. RICHARD, (?)
[SEAL.] *Commissioner of the General Land Office.*

357 *"List of Swamp and Overflowed Lands", Situated in Townships North of the Base Line and East of the 5th Principal Meridian, in the Helena Land District, Selected by the State Locating Agents.*

* * * * * * *

Part of section.	Section.	Town.	Range.	Acres.	Remarks.
Township	....	12	7	14,329.97	....

* * * * * * *

SURVEYOR'S OFFICE, LITTLE ROCK.

I hereby certify that the above and foregoing list (marked A) is a true and correct transcript from the originals filed in the Office of Surveyor General by the Governor of the State of Arkansas with only such modifications as to make the description of the several tracts agree with the plats on file in this office.

September 22, 1852.

L. GIBSON,
Surveyor General.

358 Helena, Arkansas.

Approved List No. 1.

Approved May 11, 1853.

359 *Swamp Lands.*

Part of Sections.	Sec.	T. R.	Surveyed area. Acres. Hdths.	Unsurveyed area. Acres. Hdths.	Total area. Acres. Hdths.
*	*	*	*	* *	*
All of township 12.	7	13815.67	(Except—) (Section 16)	13815.67	Pat. No. 5.

GENERAL LAND OFFICE, *May 6th,* 1853.

Respectfully submitted for approval.

JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 11, 1853.

The lands embraced in the foregoing list are hereby approved to the State of Arkansas, under the Act of Congress appd. the 28th September, 1850, subject to any valid legal rights which may exist thereto.

R. McCLELLAND, *Secretary.*

360 *Patent from U. S. to State of Arkansas.*

4–469.

No. 5.

The United States of America.

To all to whom these presents shall come, Greeting:

Whereas, By the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits," it is provided that all the "Swamp and Overflowed Lands," made unfit thereby for cultivation, within the State of Arkansas, which remained unsold at the passage of said act, shall be granted to said State:

And Whereas, In pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "Swamp and Overflowed Lands", inuring to the said State under the act aforesaid being situated in the District of Lands subject to sale at Helena, Arkansas, to-wit:

* * * * * * *

Township 12, North of Range 7 East.

The whole of the Township (except Section sixteen) containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre.

* * * * * * *

— according to the official plats of survey of said lands, returned to the General Land Office, by the Surveyor General, and for which the Governor of the said State of Arkansas did, on the twentieth day of June, one thousand eight and fifty-three, request a patent to be issued to the said State as required in the aforesaid act.

361 Now, therefore, know ye, that the United States of America, in consideration of the premises, and in conformity with the act of Congress aforesaid, have given and granted and by these presents do give and grant, unto the said State of Arkansas, in fee simple, subject to the disposal of the Legislature thereof, the tracts of land above described. To have and to hold the same, together with all the rights, privileges, immunities and appurtenances thereto belonging, unto the said State of Arkansas, in fee simple and to its assigns forever.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twenty-seventh day of September, in the year of Our Lord one thousand eight hundred and fifty-eight, and of the Independence of the United States, the eighty-third.

By the President:

[SEAL.] JAMES BUCHANAN.

JOS. S. WILSON,
Acting Recorder of the General Land Office.

27—82

362 *Stipulation as to Title to Shore Lands.*

In the Poinsett Chancery Court.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN AND DEWEY LUMBER COMPANY, and CHAPMAN AND DEWEY LAND COMPANY, Defendants.

It is stipulated by all parties to this cause, for the purposes of this cause:

1. That the State of Arkansas, not having previously alienated any of the lands hereinafter described, in 1871, by its patents or deeds of that date, conveyed to Moses S. Beach all the following tracts of lands, situate in Poinsett County, Arkansas, to-wit: All of Sections One (1), Two (2), Three (3), Ten (10), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-two (22), Twenty-three (23), all in Township Twelve (12) North, Range Seven (7) East. That these patents were put in the form of the paper hereto attached, marked A, except that section numbers were not the same in each patent, the aggregate of said patents, however, conveying all the lands last aforesaid.

2. That all the right, title and interest so acquired by Moses S. Beach to all the land above described, has become and is now vested in the Chapman and Dewey Land Company, without restriction, reservation or condition.

3. Any party to this cause may read from the records of Poinsett County any document or record that may be or become relevant, competent or material in this cause, without accounting for the original.

4. Any party hereto may introduce any other evidence, oral or documentary, otherwise admissible, notwithstanding this

363 agreement.

5. This stipulation shall also apply to the cases of Ritter vs. Schultz, No. 587, and the National Handle Company vs. Chapman & Dewey Lumber Company, No. 648, now pending in this Court.

N. W. NORTON,
For Plaintiff.
ALLEN HUGHES,
For Defendant.

12/18/08.

364 3.

Patent No. 1951. A.

THE STATE OF ARKANSAS:

To all to whom these presents shall come, Greeting:

Know ye that whereas by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas and

other States to reclaim the Swamp and Overflowed lands within their limits" approved 28th September, 1850, and whereas, under the provisions of the Act of the General Assembly of the State of Arkansas regulating the price and sale of the lands so granted, the Land Commissioner for the State of Arkansas, did grant his certificate dated the 1st day of June, 1871, and numbered 1205 to and in favor of Moses S. Beach, for the following described land. to-wit: All Section One 1, All of Section 2, The North Half of Section 3, the South Half of the North East Quarter of Section 10, the South Half of Section 10, all of Section 12; All of section 13; the North Half of the Nort- Half of Section 24; in Township 12 North of the Base Line in Range 7 East of the Fifth Principal Meridian, containing 1710 acres. And the Commissioner of State Lands of the State of Arkansas, having by his certificate dated the 12th day of June, 1871, certified that said land has been confirmed, by the United States to the State of Arkansas as a portion of the Swamp and Overflowed lands granted to the said State by the Act of Congress approved September 28th, 1850, and that the purchase money for said land amounting to 1,282 Dollars, and 62 cents has been fully paid, therefore the said Moses S. Beach is entitled to a deed from the State of Arkansas, for said land.

Now, Therefore, I, O. A. Hadley, acting Governor of the State of Arkansas, for and on behalf of said State and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed and by these presents do grant, bargain, sell, confirm,
365 and convey unto the said Moses S. Beach, his heirs and assigns, the tracts of land hereinbefore designated and lying and being in Poinsett County, Arkansas.

To have and to hold the said parcels or tracts of land hereinbefore designated with all the appurtenances and hereditaments to the said Moses S. Beach, his heirs and assigns forever.

In witness whereof, I, O. A. Hadley, acting Governor of the State of Arkansas, have hereunto set my hand and caused the seal of said State to be affixed in the City of Little Rock on the 12th day of June, 1871, and of the Independence of the United States of America the 95th year.

O. A. HADLEY.

By the Governor:

J. M. JOHNSON,
Secretary of State.

Filed for Record June 14th, 1892, and duly Recorded June 15th, 1892.

A. A. COPPAGE, *Clerk.*
By L. C. GOING, *D. C.*

366 *Clerk's Certificate.*

STATE OF ARKANSAS,
County of Poinsett:

I, J. C. Mitchell, Clerk of the Circuit Court and Ex-officio Recorder within and for the County aforesaid, do hereby certify that the annexed and foregoing is a true and complete copy of a certain conveyance from the State of Arkansas to one Moses S. Beach as the same appears of record in Record Book "H", at page 313, of the Records of Poinsett County, Arkansas.

Witness my hand and seal as such Clerk on this the 3rd day of February, 1908.

[SEAL.] J. C. MITCHELL, *Clerk.*

367 *Decree.*

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY LAND COMPANY, CHAPMAN & DEWEY LUMBER COMPANY, Defendants.

On this day this cause came on to be heard and the Plaintiff appeared by H. F. Roleson and N. W. Norton, its Attorneys, and the Defendants by Ashley-Gilbert & Dunn, Allen Hughes, and Charles Frierson their attorneys, and the cause is submitted to the Court upon the complaint, the answer of Chapman & Dewey Land Company, and Chapman & Dewey Lumber Company, the certified copy of the selection by the Governor of the State of Arkansas of Township 12 North, Range 7 East, the approval thereof of the Secretary of the Interior, the patent from the United States to the State of Arkansas, and two depositions of S. A. Sage, and Exhibits, the two depositions of G. W. Calhoun, the depositions of Willaim H. Collins, J. A. Omberg and exhibits, W. D. Connor, J. M. Winston, J. M. Gann, A. Nichols, C. T. Easley, two depositions of James Anthony, W. M. Potter, O. K. Warren, M. L. Rhodes, W. B. Miller, Ag-eed affidavit of G. W. Calhoun, depositions of C. A. Wallace, G. B. Baskerville, Jr., E. Ritter, B. A. Varner, Sterling Burrow, Ed Talbott, J. Riley, W. H. Richards, Alf Rector, John Barnes, Jones Mangrum, Francis Varner, stipulation as to title of defendants, statement of timber cut, made by Staton & Talbott, field notes of survey of 1841 made by Johnson & Sisson; field notes of exterior lines of Township 12 North, Range 7 East; map of Township 12 North Range, 7 East, Official plat of Township 12 North, Range 7 East; profile of survey made across Township 12 North, Range 7 East, and seventeed photographs of localities as exhibits to deposition of W. B. Miller.

And the Court finds that the portions of land described in the complaint and shown upon the map and plat as sunk lands and

within the meander lines of the original survey were in fact
368 land at the time of the original survey by the U. S. Government and at the time of the selection of Township 12 North, Range 7 East by the Governor of the State of Arkansas and at the time of the approval of such selection by the Department of the Interior; that the water was only temporarily upon such lands; that the survey established all the corners of said township, and all the exterior lines and one line across the same from North to South, and one line across the same from East to West; and that in fact the said Township 12 North Range 7 East was surveyed; that the selection by the Governor of Arkansas and the approval thereof by the Department, and the patent issued thereunder, carried the title to the State of Arkansas of all of the lands within said township and Range, and that the State of Arkansas by its Act of the Legislature conveyed said lands to the St. Francis Levee District, the plaintiff herein.

The Court further finds that within three years next before the institution of this action the Defendants the Chapman & Dewey Lumber Company and Chapman & Dewey Land Company went upon said lands and cut and removed therefrom 860,000 feet of cottonwood timber of the value of $1,720. Also 506,088 feet of Ash timber of the value of $1,012.16; and 34,500 feet of gum timber of the value of $69, being in all timber of the value of $2,801.16.

It is therefore by the Court considered, ordered and decreed that the plaintiff do have and recover of and from the Defendants the said sum of $2,801.16, and all costs by it in this cause expended for which execution may issue as at law.

O. K.
ALLEN HUGHES.

369 *Cost Bill.*

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN AND DEWEY LUMBER COMPANY, Defendant.

Clerk's Cost in Circuit Court	7.15
Witnesses' " "	15.40
Sheriff's Cost " "	22.70
Clerk's Cost in Chancery Court	1.80
Cost of Transcript	105.00
	$152.05

370 *Certificate.*

Clerk's Certificate.

STATE OF ARKANSAS,
County of Poinsett:

I, A. H. Landers, Clerk of the Circuit Court and Ex-Officio Clerk of the Chancery Court, within and for the County and State afore-

said, do hereby certify that the annexed and foregoing 382 pages of type-written matter contain, a true, complete and compared copy of the record proceedings and depositions had and all other papers, in the case, wherein the Board of Directors St. Francis Levee District, was Plaintiff, and the Chapman and Dewey Lumber Company, Defendant, as the same appears on file now in my office.

In witness whereof, I have hereunto set my hand and seal of said Court on this the 19th day of November, A. D. 1910.

[SEAL.] A. H. LANDERS,
Clerk Chancery Court,
By W. W. NELMS, *D. C.*

371 *Filing Transcript in Supreme Court.*

No. 1558.

CHAPMAN & DEWEY LUMBER CO. and CHAPMAN & DEWEY LAND COMPANY, Appellants,
vs.
BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Appellee.

Transcript.
Filed December 19, 1910.
P. D. ENGLISH, *Clerk.*

372 *Record Entries.*

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 28th day, being the fourth Monday of November, A. D. 1910, at the Courthouse, in the City of Little Rock, the following proceedings were had, to wit: On the 27th day of February, 1911, a day of said term:

CHAPMAN & DEWEY LUMBER COMPANY, Appellant,
v.
BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Appellee.

Appeal from Poinsett Chancery Court.

Comes the appellee by solicitors and prays a cross appeal herein, which is by the Court granted.

MARCH 13TH, 1911.

Causes for Oral Argument.

The following causes heretofore noted for oral argument are now by the court set for such argument on the following dates, viz.

* * * * * * *
* * * * * * *
* * * * * * *

1558, Chapman — Dewey L'b'r Co. v. Board Directors St. Francis Levee District, March 27th, 1911.

* * * * * * *

MARCH 13TH, 1911.

1558.

CHAPMAN & DEWEY LUMBER CO. et al., Appellant-,
v.
BOARD DIRECTORS, ST. FRANCIS LEVEE DISTRICT.

Cross-appeals from Poinsett Chancery Court.

378 Come the parties hereto by their solicitors and file their stipulations amending the record herein so as to speak the truth under Rule XXIV of the Court.

MARCH 27TH, 1911.

Causes Submitted.

The following causes being regularly called, come the parties thereto by their attorneys and solicitors, and said causes are submitted upon the transcripts of the records and the briefs filed, and are by the Court severally taken under advisement, viz,

* * * * * * *

1558, Chapman & Dewey Lumber Company et al. v. Board of Directors St. Francis Levee District. Argued orally.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of May, A. D. 1911, at the Courthouse, in the City of Little Rock, the following proceedings were had, to wit:

JUNE 5TH, 1911.

1558.

CHAPMAN & DEWEY LUMBER COMPANY et al., Appellants,
vs.
BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Appellee.

Cross-appeals from Poinsett Chancery Court.

This cause came on to be heard upon the transcript of the record of the Chancery Court of Poinsett County and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said Chancery Court in this cause.

It is therefore ordered and decreed by the Court that the decree of said Chancery Court in this cause rendered be and the same is hereby in all things affirmed with costs.

It is further ordered and decreed that said appellee recover of said appellants all its costs in this Court in this cause ex-
374 pended, and have execution thereof.

McCulloch, C. J.: dissents.

JUNE 19, 1911.

1558.

CHAPMAN & DEWEY LUMBER CO. et al., Appellants,
v.
BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Appellee.

Appeal from Poinsett Chancery Court.

Comes the appellants by solicitors and file a petition for re-hearing, and said petition is passed for one week for evidence of service and for response.

JUNE 26TH, 1911.

1558.

CHAPMAN & DEWEY LUMBER COMPANY, Appellant,
v.
BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Appellee.

Appeal from Poinsett Chancery Court.

and * * *

The petition for rehearing filed herein being called, and the same having been duly served, is submitted, and by the Court taken under advisement.

375 In the Supreme Court of Arkansas.

No. 1558.

CHAPMAN & DEWEY LUMBER COMPANY and CHAPMAN & DEWEY LAND COMPANY, Appellants,
vs.
BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Appellees.

Petition for Rehearing.

The appellants respectfully petition the Court for a re-hearing in this cause, and for cause submit that there is error in the decree and the opinion of the Court rendered herein on June 5th, 1911, in the following particulars, to-wit:

1. This case is within the doctrine announced in Little v. Williams, 88 Ark. 37, and is controlled by that case. In the said Williams case it is held that a patent of a whole township describes only the lands included within the lines actually run in making the survey, and convey only those lands. This decree and opinion holds that land outside of such description does pass under such a grant.

2. The evidence in this cause shows that the so-called sunk lands are in fact bodies of water, and particularly the said surveys show that said sunk lands are bodies of water.

3. The decision in this case is an out and out repudiation of the doctrine so emphatically announced in Little v. Williams that only the United States can impeach the surveys.

4. The appellee showed no title to the land and timber in controversy in this cause. If under the evidence the title is not in the appellants, it is outstanding in a third person, to-wit: in the United States.

5. The court erred in holding that the surveys and field
376 notes and plats that are introduced in evidence by the appellants and made under the direction and authority of the General Land Office of the United States did not show the true physical condition of the locus in quo at the date of said surveys, and in holding that said locus in quo was not a permanent body of water at the date of said surveys, but was land at the date of said surveys.

6. The court erred in holding that the appellants have no title to the locus in quo, although it was found as a fact that at the time of the survey this territory was "covered with water to a greater depth than the adjoining land, increasing in depth as the bed of the stream was approached, and undoubtedly not sectionized because of the water, and the character of the land indicating its absolute unfitness for cultivation."

7. The court erred in holding that unsurveyed land never selected, patented, nor confirmed, can be now claimed by the State of Arkansas, or anyone claiming under it as swamp land. The compromise and settlement between the State of Arkansas and the United States of America precludes such a claim. The State had no title prior to the said settlement, but only a possible inchoate claim. This claim could only have been asserted and vindicated in the manner and by the means designated by the Swamp Land Act of 1850, and that was never done.

8. The decree is erroneous because it holds that the patent for the whole township could pass lands not described in the patent. When lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions and land marks becomes as much a part of the grant or deed by which they are conveyed and controlled so far as limits are
377 concerned, as if such descriptive features were written upon the face of the deed or the grant itself. The Court erred in ignoring the inner lines of the survey entirely, and regarding the outside boundaries alone.

The appellants therefore pray for a re-hearing in this cause.

PERCY & HUGHES,
Attorneys for Appellants.

I hereby certify that in my opinion the foregoing petition is well founded in point of law.

ALLEN HUGHES.

Filed June 17, 1911.

P. D. ENGLISH, *Clerk.*

28—82

378 JULY 10TH, 1911.

Petitions for Rehearing Overruled.

Being fully advised, the petitions for re-hearing filed in the following causes are by the Court severally overruled, viz.:

* * * * * * *

1558 Chapman & Dewey Lumber Company v. Board of Directors of St. Francis Levee District; but the Court amends its opinion heretofore handed down herein.

* * * * * * *

379 *Opinion.*

In the Supreme Court of Arkansas, June 5, 1911.

CHAPMAN & DEWEY LUMBER CO.
v.
BOARD DIRECTORS, ST. FRANCIS LEVEE DIST.

Statement by the Court.

This suit was brought by the appellee for timber claimed to have been wrongfully cut from some "unsurveyed lands in St. Francis Basin lying along the right hand chute of Little River in Poinsett County in township 12 N. R. 7 E. The Levee Board alleging that it was the owner of sections 14-15-22-23 in said township outside of the original survey, and claiming title thereto under the Swamp Land grant of 1850, and the State Donation Act to the Levee Board of 1893.

Appellant answered denying all of the allegations of the complaint, alleged title in the Chapman & Dewey Land Company, a license from said company to cut timber on this land and pleaded the three year statute of limitations. Setting out the title of the Land Company it alleged that in the original survey of this township the Government surveyors found a large open lake called by them "right hand chute of Little River", "Sunk Lands", that said lake was meandered as a body of water the plats, field notes and surveys calling for said lake as a boundary, and that the Land Company owns all of the land around said lake, describing the land in controversy at the date of the survey as follows:

"(3.) Little River, which is itself an unnavigable stream divides at the foot or south end of Big Lake in Mississippi County, Arkansas, into two streams, one called the left hand chute of Little River, being the main channel, which after a tortuous course empties into the St. Francis, the other called the right hand chute of Little River flows to the west at a distance from said left hand chute varying from 1 to 5 miles, and finally empties into the St. Francis river a large part of water, however, making its way into the left hand

chute from a channel called Dillard Cutoff, at a point just south of the lands in controversy herein.

380 "(4.) The depression of the earth's surface forming the bed of this lake was caused by the New Madrid earthquake of 1811, and this was filled and made a lake by the waters of said right hand chute flowing into it. The waters of said right hand chute still find their way into this lake into the St. Francis River and the left hand chute as aforesaid. The bed of said lake is filled with logs, stumps and other debris, and has been since said earthquake."

Alleged further that the present changed conditions were due to natural causes or deposits of sediment from the Mississippi and the right hand chute, growth and fall of vegetation, etc. And that the levee had kept out the water and made dry land of what had formerly been lake bed. By reason of which it was alleged that the lake had gradually grown smaller and growth of vegetation and timber had followed the recession of the water.

It was also claimed that the waters in question are unnavigable and the territory so added to the shore lands as aforesaid was the property of the Land Company because it owned all of the shore lands on the lake and because the new land had been added gradually and imperceptibly as stated. The answer set up a necessity for an accounting and prayed that the cause be transferred to equity, which was done.

The testimony tends to show that the south boundary line of said township was surveyed in January, 1840, and the east boundary, sub-divisional lines, and meanders were surveyed in October and November, 1840, and July 1841, by Samuel Johnson, deputy surveyor. That at the time of the survey most of the land in controversy was not layed off into sections and subdivisions thereof, but designated upon the plat of said township as the "Right Hand Chute of Little Rivers", "Sunk Lands", the north and south section lines extending through the territory so designated but none being extended east and west, in other words, the unsurveyed portions of said township and the sections and parts of sections bounded

381 and designated as such are bounded on the meander line of the unsurveyed portion designated as the "Right Hand Chute of Little River" and "Sunk Lands".

This township was selected as swamp and overflowed lands by the Governor of the State of Arkansas, the selection showing all of township 12 R. 7 E. acres 14,329.97, that they were certified to the department of the Interior showing all of the township 12, R. 7 under the head "Surveyed area, acres hdth-." The figures (14,329.97)* with a line drawn through them and 13,815.67 written above. Under "Unsurveyed Area."

	Total Area.
(except —)	Acres. Hdths.
(Section 16)	13,815.67.

[*Line drawn through figures enclosed in parentheses.]

This list was approved by the Secretary of the Interior in 1853, and a patent was issued on the 27th day of September, 1858, conveying said lands, describing them as "swamp and overflowed lands inuring to the said State under the Act aforesaid, being situated in the District of Lands subject to sale at Helena, Ark, to-wit: Township 12, North of Range 7 East. The whole of the township (except section 16) containing thirteen thousand eight hundred and fifteen and sixty-seven hundredths acres * * * according to the official plats of survey of the said lands returned to the General Land Office by the Surveyor General."

A letter from the department was introduced in evidence explaining that "the original selection list of swamp lands in township 12 N. R. 7 E. gives the area of the township as 14,329.97 acres which amount was also given in the approved list." And that section 16 passed to the State under the School Grant and contained 514.30 acres and was not granted under the Swamp Land Laws" the area of section 13,815.67 acres which amount was accounted for in the patent." The change of the figures on the approved list, the subtraction was made in pencil as was shown. Copies of the list of selected lands, the plats and field notes of the Government surveys were introduced in evidence and also the following stpulation was made:

382 "It is stipulated by all the parties to this cause, for the purposes of this cause:

1. That the State of Arkansas, not having previously alienated any of the lands hereinafter described, in 1871, by its patents or deeds of that date, conveyed to Moses B. Beach all the following tracts of land, situate in Poinsett County, Arkansas, to-wit: All of Sections One (1), Two (2), Three (3), Ten (10), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-two (22), Twenty-three (23), all in Township Twelve (12) North, Range Seven (7) East. That these patents were put in the form of the paper hereto attached, marked A, except that the section numbers were not the same in each patent, the aggregate of said patents, however, conveying all the lands last aforesaid.

2. That all the right, title and interest so acquired by Moses S. Beach to all the land above described has become and is now vested in the Chapman and Dewey Land Company, without restriction, reservation or condition.

3. Any party to this cause may read from the records of Poinsett County any document or record that may be or become relevant, competent or material in this cause, without accounting for the original.

4. Any party hereto may introduce any other evidence, oral or documentary, otherwise admissible, notwithstanding this agreement.

5. This stipulation shall also apply to the cases of Ritter v. Schultz, No. 587, and the National Handle Company v. Chapman & Dewey Lumber Company, No. 648, now pending in this court."

Exhibit A referred to in the stipulation is as follows:

Patent No. 1951. A.

THE STATE OF ARKANSAS:

To all to whom these presents shall come, Greeting:

Know ye, That Whereas, by an Act of Congress of the
383 United States of America, entitled 'An Act to enable the State of Arkansas and other States to reclaim the Swamp and Overflowed lands within their limits' approved 28th September, 1850, and,

Whereas, under the provisions of the Act of the General Assembly of the State of Arkansas, regulating the price and sale of the lands so granted, the Land Commissioner for the State of Arkansas, did grant his certificate dated the 1st day of June, 1871, and numbered 1205 to and in favor of Moses S. Beach, for the following described land, to-wit: All section One 1, all of Section 2, the North Half of Section 3, the South half of the Northeast quarter of Section 10, the South half of Section 10, all of Section 12, all of Section 13, the North half of the North half of Section 24, in Township 12 North of the base line in Range 7 East of the Fifth Principal Meridian, containing 1710 acres. And the Commissioner of State Lands of the State of Arkansas, having by his certificate dated the 12th day of June, 1871, certified that said land has been confirmed, by the United States to the State of Arkansas as a portion of the Swamp and Overflowed lands granted to the said State by the Act of Congress approved September 28th, 1850, and that the purchase money for said land amounting to $1282 dollars and 62 cents has been fully paid, therefore the said Moses S. Beach is entitled to a deed from the State of Arkansas for said land.

Now, therefore, I, O. A. Hadley, Acting Governor of the State of Arkansas, for and on behalf of said State and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed and by these presents do grant, bargain, sell, confirm and convey unto the said Moses S. Beach, his heirs and assigns, the tracts of land hereinbefore designated and lying and being in Poinsett County, Arkansas.

To Have and To Hold the said parcels or tracts of land hereinbefore designated with all the appurtenances and hereditaments to the said Moses S. Beach, his heirs and assigns forever.

In witness whereof, I, O. A. Hadley, acting Governor of
384 the State of Arkansas, have hereunto set my hand and caused the seal of said State to be affixed in the City of Little Rock, on the 12th day of June, 1871, and of the Independence of the United States of America the 95th year.

By the Governor,

O. A. HADLEY.

J. M. JOHNSON,
Secretary of State."

Many witnesses testified and all agreed that the land designated "Sunk Lands," "Right Hand Chute of Little River" was Swamp Land, low, wet and unfit for cultivation, that the meander line between it and the sections and parts of sections designated was upon about the same level of ground as the surveyed lands. That there was no distinct physical depression of the land at the meander line or running with it, indicating that the lands upon one side were sunk or lower than those upon the other, and that the timber upon the surveyed and the unsurveyed lands was practically of the same kind, character and growth, that there were and have always been one or two large flag openings upon the land designated "Sunk Lands," upon which water stands longer than it does upon the other lands. That all of the lands of that vicinity, those designated "Sunk Lands" and the others surveyed, are subject to overflow.

Some of the witnesses had been over the lands in controversy in a boat at a wet season of the year and over the "Sunk Lands" in some of the adjoining townships which had been surveyed, and found the water about the same depth over them all, 3 or 4 feet. There was no evidence that these lands had ever formed a lake-bed in the usual sense of that term, nor that water had stood over them continuously for any great period, the timber all indicating that (at most) it was subject to deep periodical overflows. The surveyor's field notes and remarks showed these lands, "low, wet and unfit for cultivation," that in running the north and south section lines through them no stakes were fixed at certain corners,
385 because of the depth of the water 3 or 4 feet, and in one place it was stated to be navigable. There was no indication that the land inside the meander line designated on the map "Sunk Land" had been formed by accretion by the deposit of sediment and recession of the waters.

The testimony also tends to show the cutting of timber upon this unsurveyed land by appellant. The chancellor found that the land designated sunk lands on the plat within the meander line of the original survey was in fact land at the time of its selection, approval and conveyance to the State that was only temporarily covered by water, that the survey established all of the corners of the township and all the outside lines thereof, that the township was surveyed and the whole of it except section 16 passed to the State under said grant, and that the unsurveyed portion thereof in controversy passed to the St. Francis Levee District by grant of the State in 1893, and it thereby became the owner of the land in controversy. That the appellant had cut and removed certain timber from the said lands of the value of $2,801.16 for which judgment was rendered, and from this judgment this appeal comes.

Opinion.

KIRBY, *J.*:

This case is unlike that of Little v. Williams, 88 Ark. 37, and is not controlled by the decision therein as contended by appellant. There it was held that a grant of the township of land by a patent from the government by description "according to the official plats

of survey of said lands returned to the General Land Office by the Surveyor General, only conveyed the lands as surveyed and designated upon the plat, and did not convey lands under water shown upon the plat as 'lake'." The court said:

"We do not mean to hold that the unsurveyed land could not have been selected as swamp lands and patented to the State by the use of the proper descriptive terms in the patent. But this was
386 not accomplished by reference to townships, sections or parts thereof according to the plat of the surveys when the un-surveyed land did not appear upon the plats at all. The plats showed it to be water and not land."

In this case the Government plat of the township of land selected by the State as Swamp Lands, approved and patented as such lands in accordance with the map, and "according to the official plats of the survey of said lands returned to the General Land Office by the Surveyor General," shows the land in controversy marked "sunk lands."

It is contended that the meander line itself shows that the "sunk lands" was a body of water and we answer this in the language of the Supreme Court of the United States replying to a like contention:

"But, it is urged that the fact that a meander line was run amounts to a determination by the land department that the surveyed fractional sections bordered upon a body of water, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights; and this in the face of the express declaration of the field notes and plats that that which was lying beyond the surveyed sections was 'flag marsh,' or 'impassable marsh and water.' But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forest or prairie, land or water, Government or Indian reservation." Niles v. Cedar Point Club, 175 U. S. 300; See, also, Keen v. Calumet Canal & Imp. Co. 190 U. S. 452.

At the time of the survey it was doubtless covered with water to a greater depth than the adjoining lands, increasing in depth as the bed of the stream was approached and undoubtedly not sectionized because of the water and the character of the land indicating its absolute unfitness for cultivation. The outside boundaries of the entire township are fixed, and the lands marked "sunk
387 lands" upon the plat are within such outside fixed boundaries and shown to be so, and are clearly designated by reason of the meander line dividing the unsectionized sunk lands from the surveyed and platted lands. The whole township having been selected by the State as swamp lands and the selection having been duly approved and the entire township patented to the State as swamp lands, with the exception of section 16, denominated "School Lands" which passed by another grant, and the unsurveyed lands shown by the plat to be land and not water, and in fact not being a lake but temporarily under water, and by the "remark" and field notes of the Government surveyors who made the original surveys shown to be low, wet and unfit for cultivation, we hold that the

entire township, except said section 16, passed to the State by the swamp land grants and terms of said patent, as swamp lands. This regardless of the fact that the quantity of land contained in the township was stated in the patent and accounted for in the lands laid off in sections and subdivisions, since quantity in cases of this kind is regarded merely a part of the description and rejected if it be inconsistent with the actual area when the same is indicated and ascertained by known monuments and boundaries. 3 Wash. Real Property, sec. 2322; 2 Devlin on Deeds, sec. 1044; Doe v. Porter, 3 Ark. 60; Newson v. Pryor, Lessee, 7 Wheat., 7; Towell v. Etter, 69 Ark. 34.

The unsurveyed, or the lands designated by the meander line and not laid off in sections and subdivisions thereof did not pass as contiguous to the surveyed lands by riparian right, but by being delineated on the map and included within the outside boundary lines of the township as fixed and designated by the Government. Said unsurveyed, or lands not sectionized, not being a lake or body of unnavigable water, could not pass by riparian right of ownership with the lands bordering upon the meander line thereof, and did not pass to the State's grantee who purchased lands, sections and parts of sections, according to the map and plat of the Government which showed said lands so granted to be limited to the sections and
388 subdivisions thereof as bounded by the meander line separating the said sunk lands from them. All the lands owned by the State were granted to the St. Francis Levee District in 1893 by act of the General Assembly, and this included and passed the State's title to all of these unsectionized sunk lands acquired by the State as swamp lands and designated as "sunk lands" on the Government plat thereof.

This grant to the Levee Board having been made prior to the State's settlement with the Government and relinquishment of its right to all the remaining swamp lands to which it may have had claim under the swamp land grant, was not affected by such settlement. It follows that the title to the whole township having passed to the State, that portion thereof not platted and designated as sections and parts of sections, not having been granted by the State to its purchasers under whom appellant claimed the right to take the timber therefrom, it still remained in the State and passed to and became the property of said district by said grant of 1893.

The District being the owner of the land had the right to maintain an action against appellant for taking the timber therefrom, and there being testimony sufficient to show that timber of the value of the amount found due and for which judgment was rendered was taken, the judgment will be affirmed.

Chief Justice McCulloch, dissenting.

389 *Dissenting Opinion.*

In the Supreme Court of Arkansas, July 10, 1911.

No. 101.

CHAPMAN & DEWEY LBR. CO.
v.
BOARD DIRECTORS, ST. FRANCIS LEVEE DIST.

McCULLOCH, *C. J.*:

The facts of this case bring it, according to my views, within the rules of law announced in Little v. Williams, 88 Ark. 37, and I think that case should control. The court has, in attempting to distinguish the two cases, made a distinction without a substantial difference and, as much as I dislike to see decisions overruled which constitute rules of property, it seems to me it would have been infinitely better to overrule the former decision than to leave to law in hopeless uncertainty by adopting a line of distinction which is too fragile to serve as a guide in the future.

The first point of distinction sought to be made is that in Little v. Williams the locus in quo had been designated on the plat of the public survey as a lake, and in the present case it was designated as "Sunk Lands." In each instance it was unsurveyed, as indicated by the plat and on the field notes. It is manifest that the surveyors in marking the words "Sunk Lands" meant to designate a body of water. A careful study of the field notes makes it plain that such was the intention and the history of those formations caused by the earthquake of 1811-12 confirms it. Lands which were sunken by that great convulsion of nature became, of course, covered by water and constituted lakes though sometimes designated by the other name to indicate the method of formation.

If the words of designation "Sunk Lands" meant a body of water it was the same as if marked lake, and falls squarely within the doctrine of Little v. Williams.

The distinction sought to be made as to the question of conveyance by township, is, I think, equally untenable. The only difference is that in Little v. Williams the unsurveyed locus in quo indented the outer boundaries of the township, while in the present case it runs through the township. The point of the decision in Little v. Williams was that a description by reference to the plat of a township conveyed only the surveyed land in the township. The views now expressed by the majority entirely disregard the effect of the former decision and, I think, necessarily overrules it.

390 *Clerk's Certificate.*

SUPREME COURT,
State of Arkansas, ss:

I, Peyton D. English, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, Appellants, vs. The Board of Directors of the St. Francis Levee District, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this August 7th, 1911.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

391 *Assignment of Errors, etc.*

In the Supreme Court of the State of Arkansas.

CHAPMAN & DEWEY LUMBER COMPANY and CHAPMAN AND DEWEY LAND COMPANY, Plaintiffs in Error,
vs.
BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT, Defendant in Error.

Assignment of Errors.

Now come the petitioners in error Chapman and Dewey Lumber Company and Chapman and Dewey Land Company, by Allen Hughes, Ashley & Gilbert and Robert S. Rodgers, their attorneys, and say that in the record and proceedings of the Supreme Court of Arkansas in the above entitled cause and in the rendition of the final judgment and decree therein, manifest error has intervened to the prejudice of the plaintiffs in error, to-wit:

First. Said Supreme Court of Arkansas erred in entering judgment affirming the judgment and decree of the Chancery Court of Poinsett County, Arkansas, against the plaintiffs in error, defendants in said Chancery Court.

Second. Said Supreme Court erred in not reversing the said judgment and decree of the Chancery Court of Poinsett County, Arkansas, aforesaid.

Third. Said Supreme Court erred in holding that the unsurveyed area on which timber was alleged in the complaint to have been cut, belonged at the time of said alleged cutting to the defendant in error Board of Directors, St. Francis Levee District, and

not to the plaintiff in error, Chapman & Dewey Land Company, nor to the United States.

Fourth. Said Supreme Court erred in holding that the unsurveyed area aforesaid was not, at the time of said alleged cutting of timber thereon, the property of the plaintiff in error Chap-
392 man and Dewey Land Company.

Fifth. Said Supreme Court erred in holding that said unsurveyed area was selected by the State of Arkansas as swamp land inuring to it under the Act of Congress of September 28, 1850, known as the Swamp Land Grant, and was patented to the State of Arkansas by the United States as swamp land inuring to said State under said Act of Congress; and in holding that it, therefore, never belonged to the State of Arkansas nor to the plaintiff in error Chapman & Dewey Land Company, as riparian owner thereof.

Sixth. Said court erred in holding that the words "sunk lands" were intended to indicate or did indicate land and not water, such term having universally been used on plats of townships within the territory affected by the New Madrid Earthquake as synonimous with the word lake, same frequently appearing on plats of townships in that region as "Sunk Lands or Lake."

Seventh. Said Supreme Court erred in so construing the official plat of *fe* survey of Township Twelve (12) North, Range Seven (7) East, in Poinsett County, Arkansas, made under the authority of the United States, and duly and officially returned to the General Land Office, as to hold that the unsurveyed area from which said timber was alleged to have been cut, is shown on the face of said official plat to have been land at the date of said survey and not a permanent body of water or lake; and that said unsurveyed area was not, on said plat, excluded from, but was included in the land areas marked and shown on said plat.

Eighth. Said Supreme Court erred in holding that the patent from the United States to the State of Arkansas of date September 27, 1858, conveying the land described by the following description, to-wit, "Township Twelve, North, of Range Seven, East. The whole of the township except Section 16; containing 13,815 67/100 acres, according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General", did not exclude, but included, described, and conveyed to said State, as land in place, and not by riparian right, all of that unsurveyed area shown and meandered as water on said plat of survey, not-
393 withstanding said unsurveyed area is, on the face of said plat, excluded from all land areas thereon.

Ninth. Said Supreme Court erred in not holding that by virtue of the said official survey made and returned as aforesaid under the authority of the United States, and upon a proper construction of the official plat thereof, and of the selection thereunder by the State of Arkansas, and the approval thereof, and of said patent of September 27, 1858, from the United States to the State of Arkansas describing the land granted and conveyed according to said official plat of survey, the title to the unsurveyed area shown and meandered on said official plat as water and designated "Right Hand Chute of

Little River" and "Sunk Lands" on said plat, passed to the State of Arkansas as riparian owner, and therefore in not holding that, by mesne conveyance from said State, of the fractional sections abutting on said water so shown, the plaintiff in error Chapman & Dewey Land Company, by operation of the law of riparian rights, was the owner, at the date of the alleged cutting of said timber, of the unsurveyed area mentioned in said complaint on which said timber was therein alleged to have been cut.

Tenth. Said Supreme Court erred in this: that, after finding from an erroneous construction of said official plat of United States Government survey, that said unsurveyed area was land in place and not (as shown thereon) a body of water or lake at the date of said survey, it nevertheless held the title to said unsurveyed area to be, not in the United States, but in the Board of Directors of the St. Francis Levee District as donee of the State of Arkansas; such holding (based on such finding) being repugnant to and in conflict with the Act of Congress of April 29, 1898, ratifying the compromise and settlement of February 23, 1895, between the United States and the State of Arkansas, whereby the said State released and quit claimed to the United States all claims adjusted and unadjusted, growing out of the swamp land grant of 1850, as evidenced by an Act of the General Assembly of said State of March 10, 1897, with re-
394 lation thereto; and such holding of said Supreme Court being in conflict with and repugnant to said compromise and settlement duly entered into through the duly authorized officers of the United States and the State of Arkansas under an Act of the General Assembly of said State of April 8th, 1889, and under an Act of Congress of August 4, 1894, entitled "An Act to authorize a compromise and settlement with the State of Arkansas"; by the terms of which said compromise and settlement of February 23, 1895, the State of Arkansas expressly relinquished to the United States all claim to land not theretofore patented, approved or confirmed by the United States to said State under the swamp land grants of the United States.

And the plaintiffs in error say that in said suit, a title, right, privilege and immunity was claimed by them under a statute of and a commission held and an authority exercised under the United States, and the decision of the Supreme Court of Arkansas was against the title, right, privilege and immunity specially set up and claimed by the plaintiffs in error under such statute, commission and authority; because, under the official returns of the survey of said Township Twelve (12) North Seven (7) East in Poinsett County, Arkansas, made by direction and authority of the General Land Office of the United States, and under the patent based on said returns executed by the President of the United States to the State of Arkansas, and under the laws of the United States, especially said Act of Congress of September 28, 1850, said Act of Congress of August 4, 1894, and said Act of Congress of April 29, 1898, and under said compromise and settlement between the United States and the State of Arkansas, whereby said State relinquished to the United States all claim to the unsurveyed area involved in the suit,

if any claim it ever had thereto, as swamp land,—the title to said unsurveyed area could never, at any time, have been vested in the defendant in error, Board of Directors of the St. Francis Levee District, as erroneously adjudged by said Supreme Court of the State of Arkansas.

395 And the plaintiffs in error say that there is therefore presented in this suit a Federal Question, a decision of which was necessary to the rendering of said judgment by the Supreme Court of the State of Arkansas.

Wherefore, the said Chapman and Dewey Lumber Company and Chapman and Dewey Land Company pray that the judgment, decree and decision aforesaid may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by the action and because of said judgment, decree and decision; and further, may have such other and further relief as may be proper and just.

ALLEN HUGHES,
ASHLEY & GILBERT, AND
R. S. RODGERS,
Attorneys for Plaintiffs in Error.

Filed July 19, 1911. Peyton D. English, Clerk Supreme Court of Arkansas.

396 In the Supreme Court of the State of Arkansas.

CHAPMAN & DEWEY LUMBER COMPANY and CHAPMAN & DEWEY LAND COMPANY, Plaintiffs in Error,

vs.

BOARD OF DIRECTORS, ST. FRANCIS LEVEE DISTRICT, Defendant in Error.

Petition for Writ of Error.

To the Honorable Edgar A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas:

The petition of the Chapman & Dewey Lumber Company and the Chapman & Dewey Land Company respectfully shows that on or about the 5th day of June, 1911, the Supreme Court of the State of Arkansas made and entered a final order, judgment and decree in favor of the Board of Directors St. Francis Levee District and against your petitioners, Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, plaintiffs in error, in which final order, judgment and decree, and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of your petitioners, all of which will appear more in detail hereafter in this petition, and from the assignment of errors which is filed with this petition.

And your petitioners state that the Supreme Court of the State

of Arkansas is the highest court of the State of Arkansas in which a decision in this suit and matter could be had.

And your petitioners state that heretofore, to-wit: on or about the 31st day of August, 1907, the above named suit was commenced by the above named Board of Directors St. Francis Levee District, as plaintiff, against the above named Chapman & Dewey Lumber Company as defendant, in the Circuit Court of Poinsett County, Arkansas, by the filing of a complaint which was and is in words and figures as follows:

"In Poinsett Circuit Court.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, Plaintiff,
vs.
CHAPMAN & DEWEY L'B'R CO., Defendant.

Plaintiff states that the defendant is a corporation organized under the laws of the State of Missouri and engaged in the lumber business in the State of Arkansas.

397 That the defendant beginning about the Fall of 1904, and continuing until the Summer of 1907, at various times, entered upon the lands of the plaintiff, to-wit: Sections 14, 15, 22 and 23 in Township 12 N., R. 7 E., and cut therefrom 2400 Cottonwood Trees, amounting in all to 4,696,800 feet.

Plaintiff states that the said timber was cut from these lands which were left unsurveyed by the United States Government but which would have been, if surveyed out, in the sections aforesaid.

Plaintiff states that it owns said lands by virtue of the Act of Congress of September 28th, 1850, granting all swamp and overflowed lands to the State of Arkansas, and by Act of the Legislature of the State of Arkansas of 1893 conveying to the plaintiff all of said lands.

Plaintiff states that said timber was worth the sum of Four Dollars ($4.00) per thousand, being in all the sum of $19,764.00.

Plaintiff states that the defendant entered upon said lands knowingly and willfully and without any just claim or right thereto, and without any probable cause on the part of the defendant to believe that the said lands so trespassed upon were its own.

Said plaintiff states that under the Statute of the State of Arkansas it is entitled to recover three times the value of said timber. Wherefore it prays judgment for the sum of $59,352.00 and for all costs and all other proper relief.

JEFF DAVIS,
H. F. ROLESON,
Attorneys for Plaintiff.

That the answer to said complaint (in which answer the above named Chapman & Dewey Land Company joined as co-defendant) was filed on or about the 24th day of October, 1907, and thereafter the said cause was, by order of the said Circuit Court of Poinsett

County, transferred to the Chancery Court of said Poinsett County, Arkansas, that being a court of equity.

Said answer of your petitioners filed in said cause showed a license from said Chapman & Dewey Land Company to said Chapman & Dewey Lumber Company to cut timber on the land mentioned in the complaint and specially set up and claimed title in said
398 Chapman & Dewey Land Company to said land from which timber was in said complaint alleged to have been cut, by showing that according to the official returns of the surveys made under authority of the United States, in Township Twelve (12) North, Range Seven (7) East, in Poinsett County, Arkansas, the place from which said timber was alleged to have been taken, was at the date of said surveys, not land, but, as alleged in said answer, "an open lake about two miles wide from east to west in the widest place and having an extreme length of about three miles from north to south." Upon the said surveys, as alleged in said answer, said lake was designated and marked "Right Hand Chute of Little River," "Sunk Lands"; your petitioners alleging ownership in said Chapman & Dewey Land Company of the surveyed and sectionalized lands as shown by said official surveys and the plat thereof, meandered on said lake so shown by said survey; and said answer specifically describing the surveyed and sectionalized tracts of land so owned by said Chapman & Dewey Land Company and alleging that all said tracts of land "were meandered upon the margin of said lake, the plats and field notes calling for the lake as a boundary, and the center of said lake and not the meander line aforesaid is the boundary thereof. The said lake has long been known as Bark Camp Lake."

Your petitioners further showed in their said answer that since the date of said surveys the bed of said lake has been gradually raised by the annual deposit of sediment thereon and by other causes, and that much land has been thereby raised above the surface of the waters of said lake and that said Right Hand Chute of Little River and said lake are and always have been unnavigable waters.

And your petitioners specially set up, claimed and asserted in their said answer that "under and by virtue of the official record of said surveys, made under authority of the United States, by virtue of the laws of the United States, and especially the Act of Congress of September 28th, 1850, known as the Swamp Land Grant, and under and by virtue of the patents issued by the United States and a correct construction thereof, and the rulings of the Commissioner of the General Land Office of the United States and of the Secretary of the Interior with special reference to this land and the adjudications of the Supreme Court of the United States, the defendant, Chapman & Dewey Land Company was and is the owner of all of the bed of said 'Right Hand Chute of Little River' and 'Sunk Lands'
399 within and towards the water from said meander lines thereof."

At the trial of said cause in said Chancery Court of Poinsett County, it was admitted in written stipulations filed therein, "That

the State of Arkansas, not having previously alienated any of the lands hereinafter described, in 1871, by its patents or deeds, conveyed to Moses S. Beach all the following tracts of land situate in Poinsett County, Arkansas, to-wit: All of Sections One (1), Two (2), Three (3), Ten (10), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-two (22) and Twenty-three (23), all in Township Twelve (12) North, Range Seven (7) East" and it was further admitted in said stipulations "That all the right, title and interest so acquired by Moses S. Beach to all the land above described has become and is now vested in the Chapman & Dewey Land Company, without restriction, reservation or condition." The above named Sections 14, 15, 22 and 23 being the sections of which it was alleged in the complaint "that the said timber was cut from these lands which were left unsurveyed by the United States Government but which would have been, if surveyed out, in the sections aforesaid."

In support of the allegations contained in the answer, your petitioners introduced in evidence the duly certified copy of the official plat of the survey of said Township Twelve (12) North, Range Seven (7) East, made under the direction of the General Land Office of the United States, together with certified copies of the official field notes of the several surveyors who made said survey; said plat showing, by the given acreages marked on the several subdivisions of land indicated thereon, that the total number of acres in said township was 14,329.97, which number of acres excluded all of said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands" as aforesaid; and the return of the Surveyor of Public Lands to the General Land Office expressly stated on the face of said plat that the sum of all the areas on said township plat was 14,329.97 acres as aforesaid. Your petitioners also introduced a duly certified copy of the selection by the State of Arkansas of swamp land under the Act of Congress of September 28th, 1850, known as the Swamp Land Grant, which selec-
400 tion was approved by the Secretary of the Interior in 1853, and showed that the land selected and approved in said Township Twelve (12) North, Range Seven (7) East, comprised 13,815.67 acres, which computation of acreage corresponded exactly with the sum of all the areas as returned on said plat and above stated, after deducting therefrom School Section 16 (Sixteen), which could not be selected under said Swamp Land Grant and which computation of area excluded said Section Sixteen (16) and said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands".

Your petitioners also introduced in evidence the patent from the United States to the State of Arkansas, of date September 27th, 1858, conveying by the following description, to-wit: "Township Twelve North, of Range Seven, East. The whole of the township (except section sixteen) containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre, according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General;" which computation of area corresponded with the area of said township as returned upon

said plat of survey after deducting said section sixteen, as aforesaid, and excluded said section sixteen and said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands."

And your petitioners contended that by reason of said surveys made under authority of the United States and officially returned to and approved by the General Land Office of the United States and by reason of said selection by the State of Arkansas and said approval thereof by the Secretary of the Interior of the United States, and by reason of said patent, based on said survey, and under the laws of the United States contained in the several Acts of Congress affecting the matter in controversy, the State of Arkansas never selected as Swamp Land inuring to it under said Swamp Land Grant the unsurveyed area meandered and delineated as water by the official surveyors who surveyed said Township 12 North, Range 7 East, and by them designated "Right Hand Chute of Little River" and "Sunk Lands"; and that the United States never patented said unsurveyed area to the State of Arkansas as Swamp Land, and that said State never acquired any title to said unsurveyed area
401 other than its title to the same by virtue of riparian rights growing out of its ownership of the surveyed section*al*ized and selected lands in said township conveyed to it as aforesaid by said patent from the United States; which riparian title passed to said Moses S. Beach by the State's patent of the shore land around said lake marked and shown as "Right Hand Chute of Little River" and "Sunk Lands," and thereafter became vested in your petitioner, Chapman & Dewey Land Company, as owner of the said shore lands, and that the said Plaintiff, the Board of Directors of the St. Francis Levee District, was and at all times had been without title to the same as donee of the State of Arkansas, and was therefore without cause of action against your petitioners or either of them.

On or about the — day of October, 1910, said Chancery Court, after a trial of said cause, rendered a judgment and decree therein against your petitioners for the sum of $2801.16, from which judgment and decree your petitioners prosecuted an appeal to the Supreme Court of Arkansas and after a hearing in said cause, said Supreme Court on or about the fifth day of June, 1911, affirmed the judgment of said Chancery Court and entered final judgment and decree against your petitioners. And said judgment and decree of said Supreme Court was based upon an opinion of said Court filed in said cause wherein it was held, in substance, that because said meandered lake marked on the said official plat "Right Hand Chute of Little River" and "Sunk Lands" bore said designation "Sunk Lands" on said plat, it was not to be treated or construed as a lake but as land at the date of said survey and therefore, although not section*al*ized and surveyed, it passed as swamp land under the selection, approval and patent of said township as a whole, from the United States to the State of Arkansas, and that under an Act of the Legislature of Arkansas in 1893, all of said unsurveyed area so marked "Right Hand Chute of Little River" and "Sunk Lands", passed to the Board of Directors of the St. Francis Levee District,

notwithstanding that on said plat of survey and in said selection and approval and patent made in accordance with said plat, the quantity of said land stated to be contained in said township and surveyed, selected, approved and patented, excluded all of said unsurveyed area marked and designated "Right Hand Chute
402 of Little River" and "Sunk Lands" as aforesaid; and also notwithstanding that the State of Arkansas had, long prior to the year 1893, sold and conveyed to Moses S. Beach the several surveyed sections abutting on said unsurveyed area and made fractional by the meander line thereof; said Supreme Court holding further, in said opinion, that said Board of Directors of the St. Francis Levee District was, at the time of the alleged injury complained of, the owner of said unsurveyed area, notwithstanding the compromise and settlement between the United States and the State of Arkansas authorized, ratified and approved by the Acts of Congress hereinafter mentioned. And your petitioners having, within the proper time, filed a petition for a rehearing in said cause, said Supreme Court on or about the tenth day of July, 1911, entered an order denying said rehearing.

Said Supreme Court of Arkansas is the highest Court in the State of Arkansas in which a decision in said cause could or can be had; and its said judgment in said cause is a final judgment.

And your petitioners say that the defense specially set up by them as aforesaid, in this cause, raised and presented a Federal question, namely:

1. Whether upon a proper construction of said surveys made under authority of the United States and of the official plats and field notes thereof returned to and approved by the General Land Office of the United States, and of said selection by the State of Arkansas and the approval thereof, and of said patent from the United States, and of the laws of the United States, especially the Act of Congress of September 28th, 1850, known as the Swamp Land Grant, and the Act of Congress of August 4th, 1894, entitled "An Act to Authorize a Compromise and Settlement with the State of Arkansas", and of the compromise and settlement dated February 23rd, 1895, made under authority of said last named Act and duly reported to the Congress of the United States, whereby the said State relinquished and quit claimed to the United States all claims or demands adjusted or unadjusted growing out of the said Act of September 28th, 1850, known as the Swamp Land Grant, and relinquished its claim to all land not theretofore patented, approved or confirmed to the State under the Swamp Land Grant, and of the Act of Congress of April 29th, 1898, ratifying
403 said compromise and settlement, and of the public and official decisions of the Secretary of the Interior construing said official returns of survey, selection and approval, patent, Acts of Congress and said compromise and settlement, with special reference to the land involved in this controversy—the said Board of Directors of the St. Francis Levee District as donee of the State of Arkansas under an Act of the Legislature of that State in the year 1893, ever acquired, as stated in its complaint hereinbefore set out, any title to the land from which the timber mentioned in said complaint is therein alleged to have been taken.

2. Whether under said surveys and the official returns thereof, said selection, approval, patent, Acts of Congress, compromise and settlement and rulings of the Secretary of the Interior, the title to said land was not at the time of the alleged injury complained of in this cause, vested in your petitioners, Chapman & Dewey Land Company by the operation of the law of riparian ownership.

3. Whether under said surveys and the official returns thereof, said selection, approval, patent, Acts of Congress, compromise and settlement and rulings of the Secretary of the Interior, the title to said land was at the time last aforesaid in the United States, and whether, therefore, said sum of $2801.16 thus adjudged and decided in favor of the Board of Directors of the St. Francis Levee District, if in equity and justice owing by said Chapman & Dewey Lumber Company to anyone for timber cut from said unsurveyed area, is not in equity and justice owing to the United States.

Petitioners say that a Federal question was made in said case as hereinbefore set out and that said decision, judgment and decree of the Supreme Court of the State of Arkansas was repugnant to and in conflict with the several statutes of the United States hereinbefore mentioned, and that said decision was against the title, right, privilege and immunity specially set up and claimed by your petitioners under a statute of, and a commission held and an authority exercised under the United States; and especially was against the title, right, privilege and immunity belonging to and specially set up and claimed by your petitioners under and by virtue of surveys made and duly certified and patents duly issued by the proper officers under authority of the United States in pursuance
404 of the laws thereof, especially the Act of Congress of September 28, 1850, and also against the title, right, privilege and immunity claimed by your petitioners under said compact, compromise and settlement between the United States and the State of Arkansas, and that said decision was in conflict with and repugnant to said compact, compromise and settlement.

And your petitioners say that a decision of said Federal question was necessary to the rendering of the judgment and decree rendered in said suit.

And your petitioners further state that said judgment and decree was erroneous for the reasons shown in the assignment of errors filed herewith.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States to said Supreme Court of Arkansas be allowed; that citation be granted and signed; that the bond presented be approved; and that upon compliance with the terms of the statute in such cases made and provided said bond and writ of error may operate as a supersedeas; that the error complained of may be reviewed in the Supreme Court of the United States and the judgment and decree aforesaid of said Supreme Court of Arkansas be reversed.

CHAPMAN & DEWEY LUMBER COMPANY,
CHAPMAN & DEWEY LAND COMPANY,
By ALLEN HUGHES,
ASHLEY & GILBERT AND
R. S. RODGERS,
Their Attorneys

The writ of error as prayed for in the foregoing petition is hereby allowed this 18th day of July, A. D. 1911, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of $6000.00.

Dated at Little Rock, Ark., this 18 day of July, A. D. 1911.

E. A. McCULLOCH,
Chief Justice of the Supreme Court of the State of Arkansas.

Filed in my office this 19th day of July, A. D. 1911.

PEYTON D. ENGLISH,
Clerk of the Supreme Court of the State of Arkansas.

405 *Bond.*

Know all men by these presents, that we, Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, corporations organized and existing under and by virtue of the laws of the State of Missouri and having their principal offices at Kansas City, Missouri, as principals, and Herman Kahn, as surety, are held and firmly bound unto the Board of Directors St. Francis Levee District, a body corporate, in the full and just sum of Six Thousand Dollars to be paid to said Board of Directors St. Francis Levee District, its successors or assigns, to which payment well and truly to be made we bind ourselves jointly and severally by these presents.

Sealed with our seals and dated this 19th day of July, A. D. 1911.

Whereas, lately at the May term, 1911, of the Supreme Court of Arkansas, in a suit pending in said Court between Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, appellants, and the Board of Directors St. Francis Levee District, appellee, a judgment was rendered against the said Chapman & Dewey Lumber Company and Chapman & Dewey Land Company; and said Chapman & Dewey Lumber Company and Chapman & Dewey Land Company have sued out a writ of error in the Supreme Court of the United States to the Supreme Court of the State of Arkansas, to reverse the judgment in the aforesaid suit, a copy of which writ of error they have filed in the office of the Clerk of said Supreme Court of the State of Arkansas and there is about to be issued a citation to said Board of Directors St. Francis Levee District, citing and admonishing it to appear in the Supreme Court of the United States at Washington within thirty (30) days from the date thereof.

Now, therefore, the condition of this obligation is such, that if the above named Chapman & Dewey Lumber Company and Chap-
406 man & Dewey Land Company shall prosecute said writ to effect and answer all damages and costs, if they fail to make

good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

CHAPMAN & DEWEY LUMBER COMPANY, [SEAL.]
By WILLIAM C. DEWEY,
Vice President.
CHAPMAN & DEWEY LAND COMPANY, [SEAL.]
By WILLIAM C. DEWEY,
Vice President.
HERMAN KAHN [SEAL.]
As to Z. B. CURTIS.

Attest:
EGBERT CHAPMAN, *Secretary.*

Sealed and delivered in presence of
ROBERT S. RODGERS,
As to Chapman & Dewey Lumber Co. and Chapman — Dewey Land Co.

Attest:
EGBERT H. CHAPMAN, *Secretary.*

Sealed and delivered in presence of
——— ———.
——— ———.

The above and foregoing bond is hereby approved and ordered to be filed and made part of the record.

E. A. McCULLOCH,
Chief Justice of the Supreme Court of the State of Arkansas.

Filed July 19, 1911.

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

407 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court of the State of Arkansas, before you, or some of you (being the highest court of law or equity of said State in which a decision could be had in said suit) between Chapman & Dewey Lumber Company and Chap-

man & Dewey Land Company, defendants, appellants and plaintiffs in error, and the Board of Directors St. Francis Levee District, plaintiff, appellee and defendant in error, wherein a title, right, privilege and immunity under a statute of and a commission held and an authority exercised under the United States, was specially set up and claimed by said Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, and the decision of said Supreme Court of the State of Arkansas was against the title, right, privilege and immunity so set up and claimed, manifest error hath happened to the great damage of said Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, as by their complaint appears.

We being willing that error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ,
408 so that you have the same in said Supreme Court at Washington within thirty (30) days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 19th day of July, in the year of our Lord One Thousand Nine Hundred and Eleven.

[The Seal of the Circuit Court of East. Dist. Ark., Western Division, U. S. A.]

W. P. FEILD,
Clerk of the Circuit Court of the United States for the Western Division, Eastern District of Arkansas.
By W. PRESLEY FEILD, *D. C.*

Allowed by:

E. A. McCULLOCH,
Chief Justice of the Supreme Court of the State of Arkansas.

Filed July 19, 1911.

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

409 ***Statement.***

SUPREME COURT,
State of Arkansas, ss:

I, Peyton D. English, clerk of the said court, do hereby certify that there was lodged with me as such clerk on July 19, 1911, in the matter of the Chapman & Dewey Lumber Company and the

Chapman & Dewey Land Company, versus The Board of Directors of the St. Francis Levee District.

1. The original bond of which a copy is herein set forth.

2. Copies of the writ of error, as herein set forth, one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Little Rock, Arkansas, this August 7th, 1911.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

410 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the Board of Directors St. Francis Levee District, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Arkansas, wherein Chapman & Dewey Lumber Company and Chapman & Dewey Land Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edgar A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas this 19 day of July in the year of our Lord One Thousand Nine Hundred and Eleven.

[Seal of Court.]

E. A. McCULLOCH,
Chief Justice of the Supreme Court of the State of Arkansas.

410½ [Endorsed:] In the Supreme Court of the State of Arkansas. Chapman & Dewey Lumber Company & Chapman & Dewey Land Company, Plaintiffs in Error, vs. Board of Directors St. Francis Levee District, Defendant in Error. Citation. Service of the within Citation is hereby acknowledged this 19th day of July, 1911. H. F. Roleson, Attorney for Board of Directors St. Francis Levee District, Defendant in Error. Returned and filed the 19th day of July, 1911. Peyton D. English, Clerk of Supreme Court of the State of Arkansas.

411 *Return.*

UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this August 7th, 1911.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

Costs.

Transcript for Supreme Court, U. S..... $132.00

Paid by Plaintiff in Error.

FIELD NOTES.

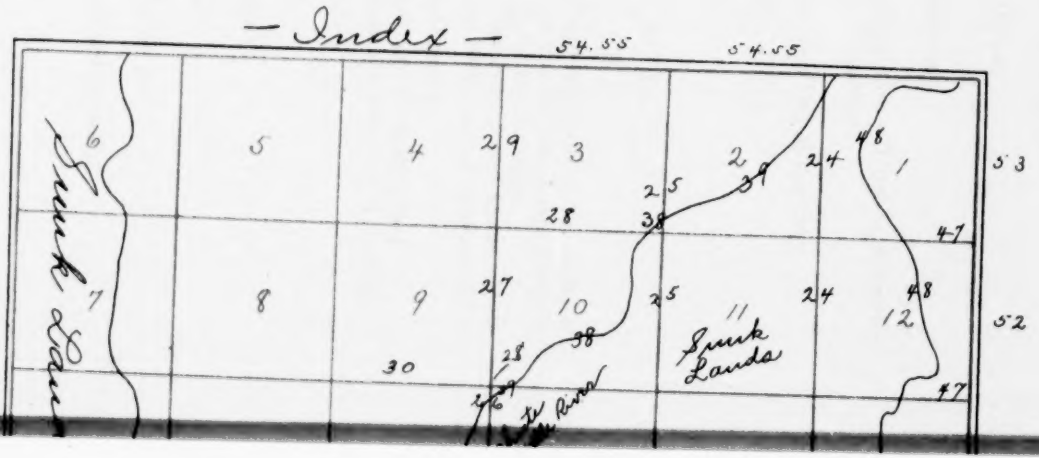
FOR

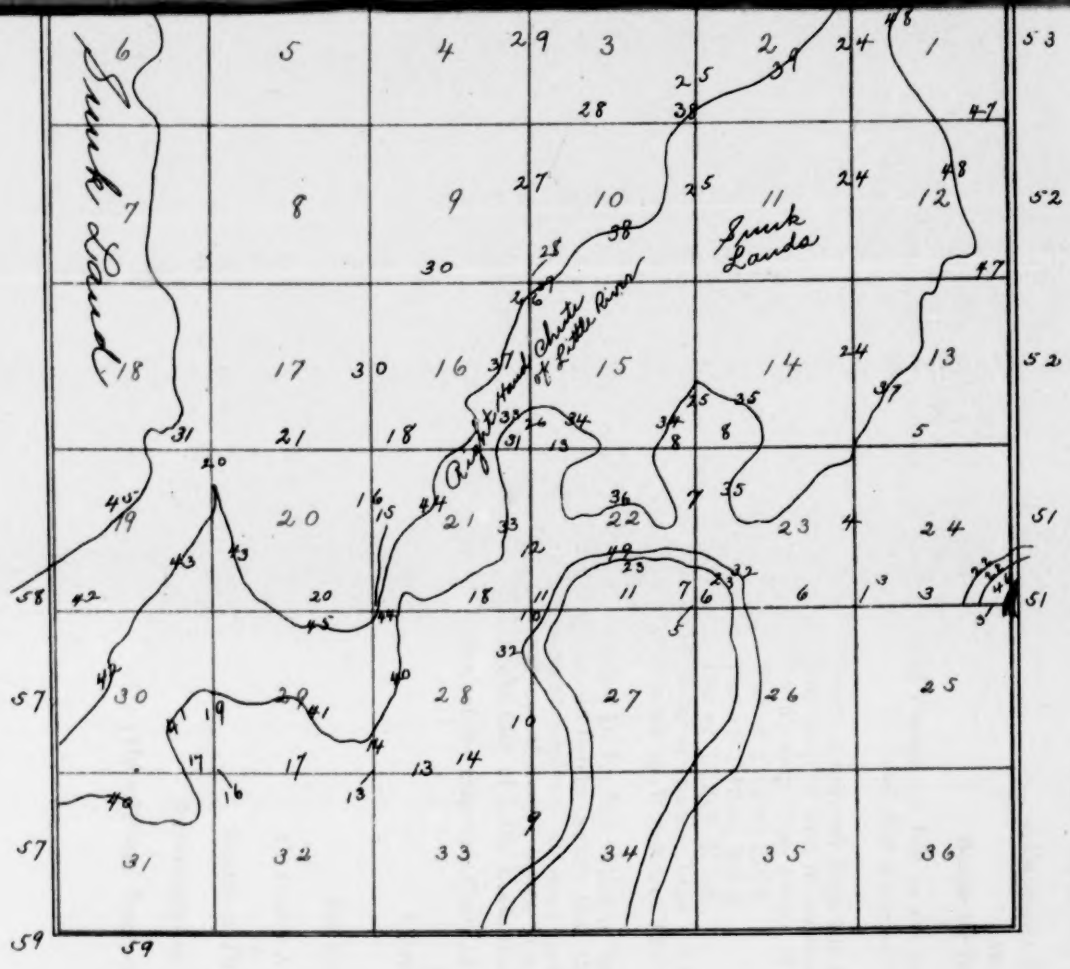
SECTIONS 1-2-3-10-12- 13-14-15-16 and 19-20-21-22-23-24-28-29-30-31

of

Township 12 North: Range 7 East Survey 1841 Johnson and Sissons

Var. 8 East





Book 700

Bundle 140

Original Field Notes.

a In the Supreme Court of Arkansas.

CHAPMAN & DEWEY
vs.
BOARD OF DIRECTORS.

A List of Things, on File in the Supreme Court, Used in Evidence and Not Attached to Transcript.

17 Pictures, numbered from 1 to 17—Exhibits Miller Dep.
√Collins' map of land in controversy:
√Calhoun's map (blue print) of T-12-7:
Gov. Plat of T-12-N, R-7-E:
Gov. Plat of T-13-N, R-8-E:
Gov. Plat of T-13-N, R-7-E:
Field Notes of Interior lines T-12-N, R-7-E:
Profile made by Winston of 12-7.

I, Peyton D. English, Clerk of the Supreme Court of the State of Arkansas, do hereby certify that the attached Field Notes, pictures and plats are copies of the same now on file in this office.

In witness whereof I hereto attach the seal of said Court at my office in the City of Little Rock, this the 10th, day of August, 1911.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas.

1 No. 1558.

CHAPMAN & DEWEY
vs.
BOARD OF DIRECTORS.

Accompanying Transcript.

(Here follows diagram marked page 2.)

3 (12)

80.00 Set a post cor. to secs. 23, 24, 25 and 26 from which a Cottonwood 12 ins. dia. bears S. 16 W. 35 links and Cottonwood 10 ins. dia. bears N. 29 E. 33 links
Land 2nd. rate soil subject to overflow in high tide
Timber Gum, Hackberry and Walnut
Undergrowth briars & spice bushes
East on a true line between secs. 24 and 25 T. 12, N. R. 7 E.

26.59 A Locust 16 ins. dia.

40.00 Set ¼ sec. cor. post from which a Cottonwood 20 ins. dia. bears N. 53½ W. 24 links and a Sycamore 6 ins. dia. bears S. 47 E. 8 links

48.00 Intersected right bank of Little River (runs S. W.) where set a post cor. to frac'l Secs. 24 & 25 from which a Hackberry 10 ins. dia. bears N. 44 W. 55 Links and a Hackberry 14 ins. dia. bears S. 50½ W. 45 links
Land 2nd rate soil subject to overflow.
Timber Gum, Hackberry & Elm
Undergrowth vines and briars.

OCT. 22ND, 1840.

Continue the true line between Secs. 24 & 25, T. 12 N. R. 7 E.

54.13 To the left bank of Little River, distance across obtained by calculation where set a post cor. to frac'l secs.

4 24 & 25 T. 12 N. R. 7 E. from which an Elm 9 ins. dia. bears N. 51 E. 15 links and a Box Elder 8 Ins. dia. bears S. 32 E. 55½ links

54.25 A Cottonwood 18 ins. dia.

69.17 Intersected Lake bears N. E. & S. W. where set a post cor. to frac'l secs. 24 & 25 T. 12 N. R. 7 E. from which a Locust 6 inc. dia. bears S. 67 E. 31 links and an Ash 6 ins. dia. bears N. 42½ W. 13 links Land low wet and unfit for cultivation
Timber Gum Willow Cottonwood & small Ash. Undergrowth vines and Elbow bushes.

OCTOBER 23*rd*, 1840.

North between Secs. 23 and 24 T. 12 N of the base line R 7 E of the 5th principal meridian

9.24 An elm 24 ins dia

30.53 A Hackberry 10 ins dia

40.00 Set ¼ sec cor post from which a Cottonwood 14 ins dia bears S 48½ W 5 links and an Ash 7 ins dia bears N 58½ E 15½ links

46.95 A cottonwood 16 ins dia

80.00 Intersected Sunk Lands on the S side of the right hand shoot of Little River where set a post cor to secs 24 & to frac'l secs 13 & 23 from which a

Double Willow 14 ins dia bears S 38 E 24 links and a Willow 10 ins dia bears N 74½ W 24 links. No other bearing trees convenient.

5 Land low wet and unfit for cultivation
Timber Gum, Ash, Willow & Cottonwood
Undergrowth Some briars.
S 89¼ East on a random line between Secs 13 & 24 T 12 N R 7 E

40.00 A temporary ¼ sec cor post

81.09 Intersected R. line 20 links S. of cor to secs 13 & 24 T 12 R 7 E.
West on a true line between Secs. 13 & 24 T 12 N R 7 E

21.23 A Gum 14 ins dia.

40.54½ Set ¼ Sec cor post from which a Cypress 7 ins dia S 10¾ W 18½ links & a Cypress 6 ins dia bears N 46½ E 17½ links

58.90 A cottonwood 10 ins dia

81.09 To the cor to sec 24 & frac'l secs 13 & 23
Land low wet and unfit for cultivation
Timber gum cottonwood willow Ash & Small Cypress.
Undergrowth a few briars
North between Secs 26 & 27 T 12 N R 7 E

* * * * *

80.00 Set post cor to secs 22, 23, 26 & 27 from which a Gum 36 ins dia bears S 48 E 56 links and a Hackberry 10 ins dia bears N 29¾ W 30 links. Land 2nd rate soil. Some places subject to overflow. Timber Gum Hackberry & Sycamore.
Undergrowth briars vines & Elm bushes

6 East on a true line between Secs. 23 & 26 T 12 N. R. 7 E

12.50 Intersected left & west Bank of Little River runs N W where set a post cor to frac'l secs 26 & 26 from which a Gum 24 ins dia bears S 64 W 42 links and a
Walnut 8 ins dia bears N 44 W 48 links
Land 2nd rate soil. Timber gum Oak Hackberry & Elm
Undergrowth vines and briars
West on a true line between secs 23 & 26 Township 12 N of the base line Range 7 East of the 5th principal meridian

28.10 An Overcup Oak 30 ins dia

40.00 Set S. W. ¼ sec cor post from which an Overcup Oak 40 ins dia bears N 29 W 45 links and a
Hackberry 8 ins dia bears S 58 E 15 links

57.03 A Willow 10 ins dia

60.00 Intersected right bank of Little River
Set a post cor to frac'l secs 23 & 26 from which a
Hackberry 10 ins dia bears N 36 E 35 links and a
Willow 15 ins dia bears S 58 E 43 links
The cor to frac'l secs 23 & 26 T 12 N R 7 E on the op-

posite side of the river bears West. Thence South 100 links from this point the cor on the opposite side of the river

7

bears N 82½ West.
Land 2nd rate soil subject to overflow
Timber Gum Oak Cottonwood Elm Hackberry & Ash
Undergrowth vines & briars.

OCT. 24TH, 1840.

Chain compared & found correct
North between Secs 22 & 23 T 12 N R 7 E.

19.87 Intersected the South and left bank of Little River, runs a little N of W where set a post cor to frac'l secs 22 & 23 from which a
Willow 10 ins dia bears S 49½ E 15 links and a
Cottonwood 24 ins dia bears S 89 W 65 links

26.00 To the right bank of Little river distance across obtained by calculation where set a post cor to frac'l secs 22 & 23 from which a
Cottonwood 10 ins dia bears N 47½ E 23 links and a
Cottonwood 20 ins dia bears N 30 W 26 links

40.00 Set ¼ sec cor post from which a
Cottonwood 14 ins dia bears N 34 E
15 links & a
Cottonwood 18 ins dia bears S 42 W 26 links

61.50 A Willow 8 ins dia

89.00 Set a post cor to secs 14, 15, 22 & 23 from which a

8

Cypress 10 ins dia bears S 49½ E 19 links
and a Cottonwood 8 ins dia bears N 75 W 32 links
Land ¾ of a mile 2nd rate soil subject to
overflow, last ¼ low wet and unfit for cultivation
Timber Cottonwood Elm & Cypress
Undergrowth briars Ash & Willow
East on a true line between Secs 14 & 23 T 12 N R 7 E

14.40 A cottonwood 12 ins dia

34.00 Intersected the Sunk Lands on the left & S side of the right hand Shoot of Little River where set a post cor to frac'l secs 14 & 23 from which a
Gum 12 ins dia bears S 85 W 25 links and a
Cypress 10 ins dia bears S 34 E 50 links
No other bearing tree convenient
Land low wet and unfit for cultivation
Timber Cottonwood and Willow small Ash & Cypress.
Undergrowth none.
West on a true line between Secs 15 and 22 T 12 N R 7 E

19.50 Intersected Sunk Lands on the left and S. side of the right hand shoot of Little River bears S W where set a post cor to frac'l secs 15 & 22 from which a

9

Willow 11 ins dia bears S 37 E 23 links and a
Maple 10 ins dia bears N 63 E 17 links
Land low wet and unfit for cultivation
Timber Willow & Small Cypress
Some Maple,
Undergrowth none.

OCT. 25TH. 1840.

North between Secs 33 & 34 Township 12 North of the base line Range 7 East of the 5th principal meridian

19.50 Intersected the left bank of Little River runs S W where Set a post cor to frac'l secs 33 and 34 from which a
Sycamore 6 ins dia bears S 57½ E 21 links and a
Cottonwood 10 ins dia bears S 25 W 40 lks

30.00 To the right bank of Little river distance across obtained by calculation where set a post cor to frac'l Secs 33 & 34 from which a Sycamore 12 ins dia bears N 30 W 27 links and a
Hackberry ins dia bears N 14 E 59 links

38.95 A sycamore 6 ins dia

40.00 Set ¼ Sec cor post from which a Gum 24 ins dia bears N 51 E 16 links and a Gum 10 ins dia bears S 51½ W 21 links

41.31½ A Gum 30 ins dia

56.40 A Cottonwood 12 ins dia

80.00 Set a post cor to secs 33 & 34, 27 & 28

10

from which a
Maple 16 ins dia bears N 23¾ E 9 links
and a Gum 30 ins dia bears S 60¾ W 54 links
Land 2nd rate soil subject to overflow
Timber Gum Elm Hackberry & Sycamore
Undergrowth none.

(30)

North between Secs 27 & 28 T 12 N R 7 E

3.87 A Gum 36 ins dia

40.00 Set ¼ sec cor post from which an Elm 12 ins dia bears N 42¼ E 9 links and a
Hackberry 16 ins dia bears S 30¾ W 31 links

44.19 An Overcup Oak 30 ins dia.

60.00 Intersected the right bank of Little River, runs E of S where set a post cor to frac'l secs 27 & 28 from which a
Cottonwood 30 ins dia bears S.1 47 links and a Sycamore 10 ins. dia bears N 53¼ W 10½ links
Thence: Offset West 5.00
North 12.50 East 5.00 to the true line

72.50 on the right bank of Little river set a post cor to frac'l secs 27 & 28 from which a Box Elder 6 ins dia bears N 5 E 43 links and a Gum 6 ins dia bears N 35½ W 37 links

11

80.00 Set a post cor to secs 21, 22, 27 & 28 from which a Cottonwood 14 ins dia bears N 44 E 3 links and a Willow 10 ins dia bears S 41¾ W 30½ links
Land 2nd rate soil subject to overflow.
Timber Gum Oak Sycamore Hackberry & Elm
Undergrowth cane, vines & briars.
East on a true line between Secs 22 & 27 T 12 N R 7 E
1.50 Intersected the right bank of Little River runs S where set a post cor to frac'l secs 22 & 27 from which a Cottonwood 10 ins dia bears N 74 W 17 links and a Willow 10 ins dia bears S 45 W 34 links
Land low wet and unfit for cultivation
Timber Cottonwood and Willow
Undergrowth none.

(35)

West on a true line between Secs 22 & 27 T 12 N R 7 E.
24.31 A Hackberry 10 ins dia
40.00 Set ¼ sec cor post from which a Gum 10 ins dia bears N 54¾ W 25 links and a Sycamore 14 ins dia bears S 14½ E 33 links
45.30 A Cottonwood 14 ins dia

12

73.89 Intersected the Left bank of Little river where set a post cor to frac'l secs 22 & 27 from which a Sycamore 11 ins dia bears N 36¼ E 339 links and a Cottonwood 18 ins dia bears S 32¾ E 22 links.
The post on the opposite bank not visible
Land 2nd rate soil subject to overflow
Timber Gum Cottonwood & Sycamore
Undergrowth vines & briars.

OCT. 27TH, 1840.

North between Secs 21 & 22 Township 12 North of the base line Range 7 East of the 5th principal meridian
21.22 A Bayou 50 links wide runs S E
20.03 A Willow 14 ins dia
40.00 Set ¼ sec cor post from which a Willow 12 ins dia bears S 58¼ E 9 links and an Ash 7 ins dia bears N 41¾ W 9 links
54.53 A Maple 10 ins dia.
80.00 Set a post cor to secs 15, 16, 21 & 22 from which an Ash 6 ins dia bears N 42 W 10 links and an Ash 10 ins dia bears S 58¾ E 3 links

Land low wet and unfit for cultivation
Timber Gum willow cottonwood and Ash
Undergrowth a little cane and briars.

13

East on a true line between Secs 15 and 22 T 12 N R 7 E
28.66 Intersected Sunk Lands on the S & left side of the right hand shoot of Little river, where set a post cor to frac'l secs 15 and 22 from which
Ash 6 ins dia bears S 65¼ W 30 links and a Willow 12 ins dia bears N 56 W 35 links
Land a wet boggy swamp
Timber small Cypress and Ash, Cottonwood & Willow.
Undergrowth a small strip of cane near the sunk land.
OCT. 28TH, 1840.

Chain compared & found correct.
North between Secs 32 & 33 Township 12 North of the Base line Range 7 East of the 5th principal meridian.

* * * * * *

80.00 Set a post cor to secs 28, 29, 32 & 33 from which a Black Oak 18 ins dia bears S 31½ W 12 links and an Elm 12 ins dia bears N 45 E 35 links

* * * * * *

East on a random line between Secs 28 & 33 T 12 N R 7 E
40.00 Set a temporary ¼ sec cor post
79.45 Fell N of cor to 27 & 28, 33 & 34, 47 links

14

West on a true line between Secs. 28 & 33 T 12 N R 7 E
9.58 A Black Oak 12 ins dia
39.72 Set ¼ sec cor post from which a Cotton 10 ins dia bears S 77½ E 10 links and a
Cottonwood 6 ins dia bears N 36½ E 7 links
47.86 A Gum 20 ins dia
79.45 To the cor to secs 28, 29, 32 and 33
Land rate soil subject to overflow
Timber Gum Oak & Hackberry
Undergrowth cane vines & briars.
North between Secs 28 & 29 Township 12 North of the base line Range 7 East of the 5th principal meridian.
30.50 Intersected the left bank of the right hand shoot of Little river runs West where Set a post cor to frac'l secs 28 & 29 from which a
Cypress 8 ins dia bears S 41½ W 13 links & a
Gum 6 ins dia bears S 28 E 12 links
50.17 To the right bank of the right hand shoot of Little river dis across obtained by calculation. Thence North through Sunk Land along the right bank of said river.

75.00 To the north side of Sunk Lands water from one to three feet deep where set a post cor to frac'l secs 28 & 29 from which a

15

Box Elder 8 ins dia bears N 31¾ W 21 links and a Cottonwood 12 ins dia bears N 39 E 13 links

80.00 Set a post cor to secs 20, 21, 28 & 29 from which a Hackberry 6 ins dia bears N 53 E 8½ links and a Maple 6 ins dia bears S 32¾ W 6 links
Land low wet and unfit for cultivation
Timber Cotton & Willow
Undergrowth none except cane at the beginning of the line.
East on a true line between Secs 21 & 28 T 12 N R 7 E

3.20 Intersected the right bank of the right hand shoot of Little river where set a post cor to frac'l secs 21 & 28 from which a Cottonwood 12 ins dia bears S 84 W 50 links & a
Gum 13 ins dia bears N 57¾ W 48½ links
Land low wet and unfit for cultivation
Timber Gum Willow & Cottonwood
Undergrowth none.

16

North between Sec 20 & 21 T 12 N R 7 E

4.98 A double willow 18 ins dia

40.00 Set ¼ sec cor post from which a Cottonwood 16 ins dia bears N 46¼ E 17½ links and a Cypress 10 ins dia bears S 46¼ W 31 links

54.24 A willow 12 ins dia

80.00 Set a post cor to frac'l secs 16, 17, 20 & 21 from which a Cypress 10 ins dia bears S 15½ E 11 links and a Cypress 8 ins dia bears N 27½ W 21 links
Land low, wet and unfit for cultivation
Timber Willow, Cottonwood Cypress & Ash
Some Gum
Undergrowth vines privy & Elbow

Nov. 1st, 1840.

North between Secs 31 & 32 T 12 N R 7 E

* * * * * *

80.00 Set post cor to secs 29, 30, 31 & 32 from which a
Willow 12 inches dia bears N 88 W 36 links and a
Willow 10 inches dia bears S 30 E 45 links
Land low wet and unfit for cultivation
Timber willow,
Undergrowth small Ash and Sycamore on the last ¼ mile
The first part of the line considerable cane.

17

West on a true line between Secs 30 and 31, T 12 N. R. 7 E

4.17 A Cypress 14 inches dia

13.21 The E side of Sunk Lands
Set a post cor to frac'l, secs 30 and 31 from which a Cypress 10 inches dia bears S 70 E 16 links and a Willow 14 inches dia bears N 33 E 19 links
Land an open grass swamp, timber small cypress in spots and a littl. willow
Undergrowth flag grass.

OCT. 6TH, 1840.

West on a random line between Secs 29 & 32 T 12 N. R 7 E.

40.00 A temporary ¼ sec cor post

79.85 Fell S of cor to secs 29, 30, 31 & 32 75 links
East on a true line between Secs 29 & 32 T 12 N R 7 E

32.38 An Overcup Oak 12 ins dia

39.92½ Set ¼ sec cor post from which a Willow 12 ins dia bears N 18¼ E 7½ links and a Willow 9 ins dia bears S 8 W 19 links

64.93 A Willow 12 ins dia

79.85 To the cor to secs 28, 29, 32 & 33

18

Land 1st ½ mile low wet and unfit for cultivation
2nd ½ 2nd rate soil
Timber Gum Oak Cottonwood & Willow
Some Cypress,
Undergrowth cane.
S 89½ E on a true line between Secs 16 & 21 T 12 N. R 7 E.

31.29 A Willow 14 ins dia.

40.00 Set a ¼ sec cor post from which an Ash 9 ins dia bears S 66 W 31 links and a Cottonwood 20 ins dia bears N 62 E 47 links

53.06 A Willow 12 ins dia

55.50 Intersected right bank of the right hand shoot of Little river runs S W where set a post cor to frac'l 16 & 21 from which a Cypress 6 ins dia bears N 76½ W 26 links and a Locust 6 ins dia bears S 81 W 28 links
Land low wet and unfit for cultivation
Timber Willow Cottonwood Small Cypress & Ash
Undergrowth a little cane and vines.

NOV. 2ND, 1840.

West on a true line between Secs 21 & 28 Township 12 North of the base line Range 7 East of the 5th principal meridian

25.98 A gum 30 ins dia.
40.00 Set ¼ sec cor post from which an Ash 8 ins dia bears N 82½ W 14 links

19

and an Ash 9 ins dia bears S 78¾ E 21 links
56.66 A Willow 14 ins dia
62.50 Intersected the left bank of the right hand shoot of Little river navigable where set a post cor to frac'l Secs 21 & 28 from which a Willow 12 ins dia bears N 59½ E 13 links and an Ash 12 ins dia bears S 39¾ E 28 links
The cor to frac'l 21 & 28 on the opposite side of the river cannot be seen from this point
Land low wet and unfit for cultivation
Timber Willow, cotton & Small Cypress.
Undergrowth none.
North between Secs 29 & 30 T 12 N R 7 E
32.46 A Willow 12 ins dia
33.50 Intersected the left bank of the right hand shoot of Little river runs W. where set a post cor to frac'l Secs 29 & 30 from which a Willow 12 ins dia bears S 31½ E 24 links
No other bearing trees convenient.
37.73 Across the current to the bank of right hand shoot of Little River distance across obtained by calculation. Thence North through Sunk lands, water from one to three feet deep.

20

80.00 No cor set
Land on the South side of river principally covered with water
Timber Willow, Undergrowth flag.
North between Secs 19 & 20 T 12 N R 7 E
68.66 To the North side of sunk lands distance obtained by calculation and measurement, where set a post cor to frac'l secs 19 and 20 from which a
Willow 7 ins dia bears N 18¼ W 17 links and a
Willow 6 ins dia bears N 12½ E 16 links
80.00 Set a post cor to frac'l secs 19, 20, 17 & 18 from which a
Willow 6 ins dia bears N 71 E 5½ links and a Cypress 8 ins dia bears S 52½ W 9 links
Land principally covered with water
Timber willow & Small Cypress
Undergrowth none.

(59)

Chain compared & found ½ an inch too long
N 89½ West on a true line between Secs 20 & 29

25.10 A Cypress 8 ins dia
40.00 Set ¼ sec cor post from which a Cypress 8 ins dia N 61½ E 10 links and a Cypress 10 ins dia bears S 67½ W 20 links
45.00 Intersected Sunk lands on the right

21

side of the right hand shoot of Little river,
where set a post cor to frac'l secs 20 & 29 from which a Willow 12 ins dia bears N 73½ E 46 links and a Cypress 8 ins dia bears S 65½ E 30 links
Land low wet and unfit for cultivation
Timber Willow cottonwood birch & Cypress
Undergrowth privy & vines.

Nov. 4TH, 1840.

S 89¼ East on a random line between Secs 17 & 20 T 12 N R 7 E
40.00 Set temporary ¼ sec cor post
79.32 Fell 28 links N of cor to secs 16, 17, 20 & 21.
West on a true line between Secs 17 & 20 T 12 N R 7 E
39.66 Set ¼ sec from which a Willow 8 ins dia brs S 32 W 10 links & a Cypress 10 ins dia bears N 18½ E 2 links
79.32 To the cor to secs 17, 18, 19, & 20
Land principally under water and unfit for cultivation
Timber willow & Cypress
Undergrowth privy & cypress knees.

22

(68)

Commenced at the cor to frac'l Secs. 24 & 25 on the left bank of Little River and meander along the left bank of said river up stream in sec 24 T 12 N R 7 E
Thence N 40 E 2.00
N 38½ E 14.00
N 42¼ E 23.00
N 71½ E 2.00 to the cor to frac'l Secs 24 T 12 N R 7 E & 19 T 12 N R 8 E
Land low wet and unfit for cultivation
Timber Willow & Cottonwood
Undergrowth none.

(192)

Commenced at the cor to frac'l Secs 24 & 25 on the right bank of Little river and meander along the right bank of said river in sec 24 T 12 N R 7 E Thence:
N 22½ E 18.00
N 29¼ E 10.00

N 42¾ E 11.00
N 55 E 11.00
N 69½ E 4.30 to the cor to frac'l secs 24 T 12
N R 7 E & 19 T 12 N R 8 E.

23

(75)

Commenced at the cor to frac'l secs 22 & 27 on the left bank of Little River and meander along the left bank of said river up stream in secs 22 T 12 N R 7 E, Thence

N 19½ E	7.92	) N 81 E	5.00
N 40½ E	22.00	) S 71¾ E	5.00
N 68 E	15.50	) S 62 E	3.00
N 82½ E	5.00	) S 53½ E	3.50
East	11.00	) S 62¼ E	1.30
S 71 E	12	) to the cor to frac'l secs 22 & 23	

Land low wet and unfit for cultivation
Timber cottonwood and willow
Undergrowth none.

Commenced at the cor to frac'l secs 23 & 22 on the left bank of Little river and meander along the left bank of said river up stream in secs 23 T 12 N R 7 E. Thence
S 44 E 7.50
S 34½ E 12.50
S 15½ E 3.50
S 18¼ W 1.97 to the cor to frac'l secs 23 & 26
Land 2nd rate soil, subject to overflow.
Timber Gum Ash Elm & Hackberry
Undergrowth vines & briars

24

(82)

North between Secs 13 and 14
Town 12 N R 7 East
40.00 in Sunk Lands no post set
80.00 in sunk lands no post set

North between secs 11 and 12
T 12 N R 7 East
40.00 in sunk lands no post set
80.00 Still in sunk lands no post set.

North between secs 1 and 2
T 12 N. R 7 East
40.00 in sunk lands no post set
68.00 Intersected the left bank of the right hand shoot of Little river runs southwest.
75.00 To the opposite side of the river distance across obtained by calculation. Where set a post corner to frac'l secs 1 and 2 from which a Cypress 10 dia bears N 30½

W 4½ links and a Cypress 12 inches dia bears N 10 E 15 links

80.85 Intersected the township line 100 links west of the corner to secs 35 and 36 T 13 N R 7 East where set a post cor to secs 1 and 2 T 12 N R 7 E from which a Cypress 10 inches dia bears S ¼ W 5.82 links. No other bearing tree convenient
Land all under water.
Timber cypress near the river
Undergrowth tall grass.

25

North between Secs 14 and 15 T 12 N R 7 E.

21.00 A Cypress 10 inches dia

25.00 Intersected sunk lands on the left & S side of the right hand shoot of Little River bears S W where set a post corner to frac'l secs 14 & 15 from which a Cypress 10 inches dia bears S 85½ E 6 links and a Cypress 8 inches dia bears S 52½ W 24 links
Land low wet and unfit for cultivation
Timber willow and small Cypress
Undergrowth none.

40.00 in sunk lands no post set

80.00 in sunk lands no post S.

North between secs 10 and 11 T 12 N R 7 E

40.00 Still in sunk lands no corner set

80.00 in sunk lands no corner set.

North between secs 2 & 3 Township 12 North of the base line Range 7 East of the 5th principal meridian

5.50 To the right & North bank of the right hand shoot of Little river dist across the current obtained by calculation which is 5 chas wide, where set a post cor to frac'l secs 2 & 3 from which a

26

Willow 8 inc dia bears N 32½ W 61 links & a Willow 6 ins dia bears N 12 E 16 links

35.25 A willow 12 ins dia

40.00 Set ¼ sec cor post from which a Cypress 8 ins dia bears S 37½ E 14½ links and a Cypress 10 ins dia bears N 25 E 17½ links

46.70 A Willow 11 ins dia

81.15 Intersected the South boundary of T 13 N R 7 E 37 links West of cor to secs 34 & 35 where set a post cor to secs 2 & 3 T 12 N R 7 E from which a Willow 8 ins dia bears S 17½ E 1.30 chs. No other bearing tree convenient
Land low wet & unfit for cultivation
Timber cottonwood & Willow
Undergrowth elbow brush.

North between Secs 15 & 16 T 12 N R 7 E
11.50 To the South side of the Sunk lands on the left bank of the right hand shoot of Little River where set a post cor to frac'l secs 15 & 16 from which a Cottonwood 12 ins dia bears S 16 W 3 links and a Cottonwood 18 ins dia bears S 43 E 37½ lks
76.00 To the right bank of the right
27
hand shoot of Little river, Distance across obtained by measurement & calculation, where set a post cor to frac'l secs 15 & 16 from which a Cottonwood 10 ins dia bears N 13 E 21 links & an
Elm 8 ins dia brs N 32½ W 15 links
80.00 Set a post cor to Secs 9, 10, 15 and 16 from which an
Ash 10 ins dia bears S 36 E 35 links and an Ash 10 ins dia bears N 46 W 25 links
Land low, wet and unfit for cultivation
Timber willow small ash & some cottonwood
Undergrowth very little

North between Secs 9 & 10 T 12 N of the base line R 7 E of the 5th principal meridian
12.12 A Willow 15 ins dia
40.00 Set ¼ sec cor post from which a Sycamore 12 ins dia bears S 36 W 9 links and a Willow 15 ins dia bears S 48½ E 25 links
48.27 A Cottonwood 18 ins dia
80.00 Set a post corner to secs 3, 4, 9 and 10 from which a Black Oak 16 inches dia bears South 57 W 20 links and a
Black Oak 12 inches dia bears S 51½ E 24 links
28
Land low wet and subject to overflow 4 feet deep.
Timber Swamp Oak Willow and cottonwood
Undergrowth vines and briars in spots.

East between secs 10 and 15
Town 12 North R 7 E
2.35 Intersected the right bank of the right hand shoot of Little river where set a post cor to frac'l secs 10 and 15 from which a
Cottonwood 18 inches dia bears S 41 W 37½ links and a Willow 10 ins dia bears N 45 W 37½ links
Land low and wet
Timber cottonwood and Willow
Undergrowth briars
East on a true line between Secs 3 and 10
Town 12 N R 7 East
18.06 A Maple 15 inches dia

40.00 Set a ¼ section post from which a Maple 10 inches dia bears S 75 E 29 links and a Willow 8 inches dia bears N 69½ W 23 links
65.54 A Willow 10 ins dia
73.50 Intersected the right banks of the right hand shoot of Little river where set
29
a post cor to frac'l secs 3 and 10
from which a
Willow 18 inches dia bears S 58 W 46 links and a
Willow 10 inches dia bears N 8½ W 36 links
Land low and very wet
Timber cottonwood and willow
Undergrowth briars & vines.

North between Secs 3 and 4
T 12 N R 7 East
24.63 A Willow 12 inches dia
40.00 Set a ¼ section cor post from which a Cottonwood 12 inches dia bears N 60 E 49 links and a Willow 14 inches dia bears N 78 W 28 links
63.12½ A Cypress 8 inches dia
81.00 Intersected the township line 50 links West of the cor to Secs 33 and 34 T 12 N R 7 E where set a post corner to secs 3 and 4 T 12 N R 7 E from which a Maple 10 inches dia bears S 27 W 30 links and a Willow 12 inches dia bears S 15 E 13 links
Land wet and subject to overflow
Timber cottonwood and willow
Undergrowth small ash vines

Nov. 22nd. 1840.

30
North between Secs 16 & 17 T 12 N R 7 East
9.50 A Willow 14 inches dia
40.00 Set a ¼ sec cor post from which a Willow 12 ins dia bears N 41 W 21 links and a Willow 10 inches dia bears S 68 W 23 links
72.15 A Willow 6 inches dia
80.00 Set a post cor to secs 8, 9, 16 and 17 from which a Cypress 10 ins dia bears N 73 W 46 links and a Willow 10 inches dia bears S 73 E 74 links
Land low wet and unfit for cultivation
Timber willow
Undergrowth none.

East on a random line between Secs 9 and 16 T 12 N R 7 E
40.00 Set a temporary ¼ sec cor post
79.50 Fell 40 links South of the cor to secs 9, 10, 15 and 16.

West on a true line between Secs 9 and 16
9.19 A Willow 12 inches dia
39.75 Set a ¼ section corner post from which a
Cypress 10 inches dia bears N 27 W 24 links
31
and a Willow 16 inches dia bears S 42 W 43 links
61.56 A Cottonwood 14 inches dia
79.50 The cor to secs 8, 9, 16 and 17
Land low wet and unfit for cultivation
Timber willow Ash and Small Cypress
Undergrowth very little.

Chain compared and found correct.

(112.)

West on a true line between 18 and 19 T 12 N. R.
7 East
28.08 Intersected large body of sunk lands 35 links South of
witness corner on the East side of the sunk lands where
set a post corner to frac'l secs 18 and 19 from which
a willow 10 inches dia bears S 80 E 15 links and a
Willow 8 inches dia bears N 75 E 20 links
Land low wet and unfit for cultivation
Timber willow
Undergrowth privy.

(120)

West on a true line between secs 16 & 21 Township 12
North of the base line R 7 East of the 5th principal
meridian
9.73 Intersected the Sunk lands on the left bank of the
right hand shoot
32
of Little river navigable, where set a post cor to
frac'l secs 16 & 21 from which a
Willow 10 ins dia bears S 27 E 13 links
and a Cypress 8 ins dia bears N 18½ E 37½ links
Land low, wet and unfit for cultivation.
Timber Willow & Small Cypress
Undergrowth none.

(128)

Commenced at the frac'l corner to frac'l Secs 23 and
26 on the right bank of Little River and meander down
said river through sections 23 T 12 N R 7 E
Thence N 13 W 2.00
N — 8.28
N 57 W 6.88
N 48½ W 16.50
N 65 W 2.00 to the corner to frac'l secs 22 and

Land 2nd rate soil subject to overflow
Timber cottonwood Elm Sycamore
Undergrowth briars.

(131)

Commence at the corner to fractional secs 27 and 28 on the right bank of Little River and meander along the bank of said river in Section 28
Thence S 13½ E 1.11 & S 1½ E 2.34

33

S 21 W 5.00 & S 21 E 5.00 to the corner to frac'l secs 27 & 28 T 12 N R 7 E
Land 2nd rate soil subject to overflow
Timber gum ash Elm.
Undergrowth cane.

(135)

Commenced at the corner to frac'l Secs 21 and 28 on the East bank of the right hand shoot of Little river and meander along the left bank of said river thro secs 21 Thence

N 32½ E 5.00) N 48½ E 40.00
N 78 E 6.50) N — 45.00
E 13.85) N 12 E 2.00

to the corner of frac'l secs 16 and 21 T 12 N R 7 E
Land low wet and unfit for cultivation
Timber Willow and some cottonwood
Undergrowth small cypress and elbow brush.

Commenced at the corner to secs 16 and 21 T 12 N R 7 E on the left and S E side of the right hand shoot of Little River and meander along in section 16 T 12 N R 7 E Thence

N 41 E 7.00) N 32 E 2.00 To
N 43 E 6.00) the cor to frac'l secs 15 and 16 Township 12 N R 7 E of the 5th prin meridian

34

Land low wet and unfit for cultivation
Timber willow and cottonwood
Undergrowth Small cypress and ash

Commenced at the cor to Secs 15 and 16 T 12 N R 7 E on the left and S E side of the right hand shoot of Little river and meander along the left bank of said river through section 15

Thence S 55 E 5.00) S 67 E 5.00
S 73 E 14.00) S 68 E 7.00 to the cor to frac'l Secs 15 and 22
Township 12 N R 7 E of the 5th principal meridian

Land low wet and unfit for cultivation
Timber cottonwood and willow
Undergrowth some small cane.

Commenced at the cor to frac'l secs 15 and 22 on the left and south side of the Sunk lands on the right hand shoot of Little river and meander along the left side of said sunk land through Section 15 T 12 N R 7 E
Thence N 35½ E 30.00
N 79¼ E 2.00 to the cor to frac'l secs 14 and 15 on the South side of the Sunk lands
Land low wet and unfit for cultivation

35

Timber Cypress and Willow
Undergrowth Small brush, name unknown

Commenced at the cor to frac'l Secs 14 and 15 on the South and left side of the Sunk lands on the right hand shoot of Little river and meander along through Secs 14 Township 12 N Range 7 E Thence S 44 E 15.00)
S 77 E 15.00
S 55 E 10.00) S 6 E 5.00 to the cor to secs 14 and 23 Township 12 N Range 7 E
Land the last ¼ mile 2nd rate soil
Timber cottonwood and Elm
Undergrowth cane.

Commenced at the corner to Secs 13, 14 25 and 24 Town 12 N R 7 East and meander along around the south side of the sunk lands on the right hand shoot of Little river Section 23 Thence

S 20 W 11.69)	West — 6.81
S 53 W 5.73)	S 48 W 3.06
West — 5.10)	West — 11.29
S 64¾ W 6.73)	N 24 W 3.33
S 35 W 11.08)	N 41½ W 4.50
S 53¾ W 8.44)	N 23¾ W 8.50

36

N 28 E 2.40)	N 36 E 3.50
N 40 E 3.84)	N 73 E 8.00 to
North — 7.29)	the corner to frac'l secs 14 and 23

Land low wet and unfit for cultivation
Cottonwood and willow
Undergrowth briars and willow

Commenced at the corner to frac'l secs 15 and 22 on the Southerly side of the Sunk lands on the right hand shoot of Little river and meander along said sunk lands through section 22 Thence

S 39½ W 7.28)	S 67¼ W. 6.69
S 10 W 7.76)	N 33 W. 10.71

S 24 E 19.37) W — 4.21
S 52½ E 12.26) S 73¼ W 5.00
S — 4.00) S 64 W 3.10
W — 7.30) N 7 W 4.25
N 49 W 10.00) 3.00 chains on this
N 81¼ W 6.25) course a Bayou 50 links wide runs Southwest
North — 6.00) N 38 E 9.69
N 8 E 5.00) N 22 E 7.00 to
N 35½ W 4.79) the cor frac'l
N 63¾ W 5.00) secs 15 and 22
Land low wet and unfit for cultivation
Timber willow and small ash
Undergrowth none.

Nov. 2nd. 1840.

Commenced at the corner to frac'l Secs 13, 14, 23 and 24 Town 12 N R 7 E on the South side of the sunk lands on the left and S E side of the right hand shoot of Little river and meander along the side of said sunk lands through Section 13 Thence
N 65½ E 13.00) N 43¼ E 8.50
N 73¾ E 10.00) N 63 E 5.00
N 73½ E 10.00) N 2 E 28.00
N 42¼ E 12.58) N 56 E 10.00
N 7¾ E 6.44) N 28¼ E 11.68
to the corner to frac'l secs 13 and 12 T 12 N R 7 East
Land low wet and unfit for cultivation
Timber willow
Undergrowth none.

Commenced at the cor to frac'l Secs 15 and 16 on the right bank of the right hand shoot of Little river and meander along said river through section 16 Thence
S 35¾ W 9.50) S 30 W 15.00
S 30 W 10.00) S 10 E 1.80
S 10 W 10.00) S 60 E 2.50
S 16½ W 20.00) Intersected a Bayou 72 links wide bears South
S 16.00 to the corner to frac'l secs 16 and 21

Land wet and subject to overflow
Timber Cypress and cottonwood
Undergrowth very little.

Nov. 10th. 1840.

Commenced at the corner to frac'l Secs 2 and 3 on the right bank of the right hand shoot of Little river and meander along through Section 3 Thence
South 56 W 6.08

S 42 W 3.16 to the corner to frac'l secs 3 and 10 T 12 N R 7 E
Land low wet and unfit for cultivation
Timber willow
Undergrowth none.

Commenced at the corner to frac'l secs 3 and 10 T 12 N R 7 East on the right bank of the right hand shoot of Little river and meander along said river through section 10 Thence

S 41½ W	2.97	N 82½ W	9.55
S 34½ W	8.00	S 64¾ W	6.15
S 25½ W	10.00	S 81¼ W	22.50
S 2½ E	13.00	S 24 W	5.00
S 32 E	6.87	S 53¾ W	7.34
South	7.81	S 41 W	11.17 to
S 44 W	22.99	the corner of frac'l	

39

secs 10 and 15
Land low wet and unfit for cultivation
Timber cottonwood and willow
Undergrowth the ¼ mile briars and cane, the balance high grass.

Commenced at the corner to frac'l secs 10 and 15 on the right bank of the right hand shoot of Little river and meander along said river in Section 15 Thence S 30 W 4.63 to the cor of frac'l secs 15 and 16 T 12 N R 7 E
Land low and subject to deep overflow. Timber cottonwood & Willow
Undergrowth briars and vines.

Commenced at the corner to frac'l secs 2 and 3 and meander along the right and N W side of the right hand shoot of Little rive through sec 2 Town 12 N R 7 East Thence

N 42 E	14.00	N 50½ E	12.00
N 61½ E	6.50	N 25¾ E	12.00
N 35 E	7.00	N 56 E	7.75
N 77½ E	6.00	N 83½ E	3.50
N 67½ E	13.50	to the corner to	
N 44½ E	15.00	frac'l secs 1 and 2	
N 70½ E	5.00	T 12 N R 7 E	
N 24 E	9.50	Land all under water	

40

Timber small cypress and willow
Undergrowth high grass.

Nov. 13TH. 1849.

Commenced at the cor to frac'l secs 21 & 28 on the left bank of the right hand shoot of Little River and meande

along the left side of said river down stream in Sec 28 T 12 N R 7 E Thence
S 52¼ W 8.17) S 39 W 6.44
South 20.00) S 19 W 15.00
S 17 W 5.23) S 41 W 1.11 To the cor to secs 28 and 29 T 12 N R 7 E
Land low wet and unfit for cultivation
Timber willow cotton and gum
Undergrowth cane vines and briars.

Commenced at the cor to frac'l secs 31 T 12 N R 7 E and 36 T 12 N R 6 E on the S and left side of the right hand shoot of Little river and meander along the left bank of said river & sunk lands in sec 31 T 12 N R 7 E and 36 T 12 N R 6 E on the S and left side of the right hand shoot of Little river and meander along the left bank of said river and sunk lands in Sec. 31 T 12 N R 7 E. Thence
East 25.00) S 70½ E 10.50
South 5.00) N 34½ E 10.00
S 50¼ E 7.00) N 1½ E 5.00
N 83¼ E 7.00) N 40 W 11.49
S 75¼ E 23.00) S 37 W 4.50

41

To the cor to frac'l Secs 30 & 31
Land low wet and unfit for cultivation
Timber Willow
Undergrowth tall grass.

(184)

Commenced at the cor to frac'l Secs 30 & 31 on the S side of sunk lands left bank of the right hand shoot of Little river and meander along said sunk lands in Sec 30, T 12 N R 7 E. Thence N 18¾ E 30.00 & N 35 E 6.20 to the cor to frac'l Secs 29 & 30.

(154)

Commenced at the cor to frac'l secs 29 & 30 on the left bank of the right hand shoot of Little river and meander along the left bank of said river and S side of sunk lands in Sec 29, Thence
N 73¾ E 5.00) N 69 E 2.17
S 54½ E 5.64) N 35 E 3.33
S 89 E 29.31) N 79 E 5.81½
S 21 E 4.50) N 44 E 5.78
S 50½ E 10.50) N 56½ E 2.10
S 33½ E 3.10) To the cor to frac'l
S 70 E 7.10) secs 28 & 29
N 70 E 5.67) Land low wet and
N 32 E 5.00) unfit for cultivation

42

Timber Willow, Gum & Ash
Undergrowth some cane

Commenced at the cor to Frac'l Secs 30 T 12 N R 7 E and 25 T 12 N R 6 E on the right and N side of the right hand shoot of Little river and meander along the right bank and N side of sunk lands on said river in Sec. 30 T 12 N R 7 E Thence:
N 29 E 30,00) N 41¼ E 18,00
North 15,50) N 31 E 2.19
where set a post cor to frac'l secs 19 & 30 T 12 N R 7 E from which a
Willow 8 ins dia bears S 85 W 27 links and a Willow 6 ins dia bears N 32½ W 13 links
Land low wet and unfit for cultivation
Timber Willow & small cypress
Undergrowth Privy & Elbow

Nov. 17TH, 1840.

Commenced at the last described cor to secs 19 & 30 on the west bank of Chute of Little River. Thence West on a true line between Secs 19 & 30 T 12. N R 7 E

10.00 A Willow 8 ins dia
27.50 Intersected Range line 35 links

43

S of cor to secs 24 & 25 T 12 N R 6 E where set a post cor to secs 19 & 30 T 12 N R 7 E from which a Willow 8 ins dia bears S 15 E 54 links and a Cypress 6 ins dia bears N 75 E 41½ links
Land low wet and unfit for cultivation
Timber willow & small cypress
Undergrowth none.

(183)

Commenced at the cor to frac'l Secs 19 & 30 on the West side of Sunk lands and meander along the W side of said Sunk lands in Sec 19 T 12 N R 7 E. Thence
N 38 E 33,00) N 42 E 14.00
N 43¼ E 10.00) N ½ E 11.18
N 47 E 20.00) to the cor to frac'l secs 19 & 20.

(159)

Commenced at the cor to frac'l secs 19 & 20 on the N side of Sunk lands on the right side of the right hand shoot of Little river and meander along the N & side of said Sunk lands in Sec 20
T 12 N R 7 E. Thence
S 57 E 19.00 & S 17¼ E 27.00

44

S 15 E 15.00) S 20¼ E 8.00
S 11¾ E 10.00) S 70 E 3.05 to
the cor to frac'l secs 20 & 29
Land low wet and unfit for cultivation
Timber willow & cypress
Undergrowth Privy & Elbow.

Commence at the cor to frac'l Secs 16 & 21 on the right bank of the right hand shoot of Little River and meander along the right bank of said river down stream in Sec 21 T 12 N R 7 E Thence
S 25¼ W 1.30) S 16¼ W 5.00
S 69½ W 8.00) S 32½ W 10.50
S 34½ W 8.00) S 12½ W 7.70
S 17½ W 11.50) S 43 W 40.00
S 22 E 4.50) S 31¼ W 3.80
To the cor to frac'l secs 21 & 28
Land 1st ½ mile 2nd rate soil subject to overflow, remainder low wet and unfit for cultivation
Timber Gum Ash Willow & Cottonwood
Undergrowth a little cane vines & briars.

Commenced at the cor to frac'l secs 21 & 28 on the right bank of the right hand shoot of Little river and meander along the right bank

45

of said river in Sec 28 T 12 N R 7 E
Thence S 33 W 6.01 To the cor to secs 29 & 28
Land 2nd rate soil, subject to overflow
Timber gum, Box Elder cottonwood & Willow
Undergrowth none.

Commenced at the cor to frac'l Secs 28 & 29 on the N side of sunk lands on the right bank of the right hand shoot of Little river and meander along the N side of said Sunk Lands in Secs 29 T 12 N R 7 E Thence
West 30.00
N 73 W 13.95
N 60 W 2.07 to the cor to frac'l secs 20 & 29
Land low wet and unfit for cultivation
Timber Willow Small Cypress and Ash
Undergrowth Privy

Nov. —TH, 1830

(181)

Commenced at the cor to frac'l secs 24 Township 12 North of the base line Range 6 East of the 5th principal meridian & 19 T 12 N R 7 E on the S E side of Sunk lands and meander along the S E side of

46

said sunk lands in sec. 19 T 12 N R 7 E
Thence N 48 E 34.00
N 39 E 40.00
North 10.55 to the cor to frac'l secs 18 & 19
Land &c as before described
(Land low wet and unfit for cultivation. Timber Willow Undergrowth Privy.

(171)

Commence at the cor to frac'l secs 24 & 25 on the West side of Lake and meander along the N W side of said Lake in Sec.
24 T 12 N R 7 E Thence
N 6½ E. 5.00
N 80 E 8.00
N 65 E 1.84 To the cor to
frac'l secs 24 T 12 N R 7 E & 19
T 12 N R 8 E
Land low wet and unfit for cultivation
Timber Willow Cotton Ash & Small Cypress
Undergrowth Privy elbow bushes vines & briars.

Nov. 17TH. 1840.

47

West on a true line between Secs 1 & 12 Township 12 North of the base line Range 7 East of the 5th principal meridian.

22.17 A cypress 10 ins dia
34.50 Intersected large body of sunk lands on the left side of the right hand shoot of Little river (navigable) where set a post cor to frac'l secs 1 & 12 from which a Willow 6 ins dia bears N 39 E 5 links and a Cypress 6 ins dia bears S 52 E 12 links
Land principally covered with water and unfit for cultivation
Timber Willow Small Cypress & Ash
Undergrowth Privy & Elbow bushes.

West on a true line between Secs 12 & 13 T 12 N R 7 E
15.67 Intersected Sunk lands on the S and left side of the right hand shoot of Little river, where set a post cor to frac'l secs 12 & 13 from which an
Ash 6 ins dia bears N 28½ E 16 links
and a Maple 7 ins dia bears S 18 E 28 links
Land low wet and unfit for cultivation
Timber Willow Maple Ash & Small Cypress
Undergrowth none.

48

Commenced at the cor to frac'l Secs 12 & 13 on the E side

of Sunk lands and meander along the East side of said Sunk lands in Sec 12 T 12 N R 7 E Thence

N 75 E	10.50	) N 7½ W	20.00
N 62 E	3.00	) N 10½ W	16.00
North	2.50	) N 47 W	12.00
N 33½ W	17.00	) N 74 W	4.15
N 16 W	15.00	) to the cor to fracl secs 1 and 12	

Land low wet and unfit for cultivation.
Timber Willow Ash & Small Cypress
Undergrowth privy & Elbow.

Commence at the cor to fracl secs 1 & 2 on the E side of Sunk lands and meander along the E side of said Sunk lands in Sec 1 T 12 N 7 E Thence

N 50 W	10.00	) N 20½ E	15.00
N 27½ W	13.00	) East	25.00
N 13 W	3.00	) N 77 E	8.00
North	25.00	) N 23¾ E	1.50
N 15 E	18.00	) to the cor to fracl secs 36 T 13 N R 7 E & 1 T 12 N R 7 E	

Land low wet and unfit for cultivation
Timber Willow Ash and Small cypress
Undergrowth Privy & Elbow bushes.

49

(185)

Commenced at the cor to fracl secs 22 & 23 on the Bank of Little river and meander along the right bank of said river in Sec 22 T 12 N R 7 E

Thence N 63½ W	19.50	) S 60 W	20.00
West	11.00	) S 45½ W	12.50
N 81¼ W	10.50	) S 9 W	15.00
West	3.00	) S 7 W	1.05
S 78 W	8.00	) To the cor to frac'l secs 22 & 27.	

(179)

Commenced at the cor to frac'l secs 36 T 13 N R 7 E and 1 T 12 N R 7 E on the right bank of the right hand shoot of Little river and meander along said river and Sunk Lands in Sec 1 T 12 N R 7 E
Thence S 11¼ W 5.11 To the cor to frac'l secs 1 & 2
Land under water and unfit for cultivation
Timber a few willows
Undergrowth none except high grass.

50

I certify that the foregoing notes on pages — inclusive are the original field notes of the survey therein specified, that the surveys were executed

by and the field notes taken by myself in person at the date therein written.

SAM'L JOHNSON,
Dept. Sur.

I certify that the foregoing notes on pages 181 to 193 inclusive are the original and taken by myself.

SAM'L JOHNSON.

51

(70)

On East side Township 12 N R 7 E

* * * * * * *

To Lake impassible No corner set
Thence continue offsets along east side of frac'l sec 24 T 12 N R 7 E N 7.00 chs
East 10.25 to the true line in advance of Lake where set a post cor to frac'l secs 24 & T 12 N R 7 E & 19 T 12 N R 8 E from which a Cottonwood 6 ins dia brs N 27 W 16 lks & a Cottonwood 10 ins dia brs N 25½ E 27 lks

7.86 Cottonwood 10 ins dia

30.30 Intersected left bank of Little river runs S W navigable where set a post cor to frac'l Secs 24 T 12 N R 7 E & 19 T 12 N R 8 E from which a Sycamore 6 ins dia brs S 33½ E 9 lks & a Cypress 10 ins dia brs S 31 W 16 lks

41.00 To the right bank of Little River distance across obtained by calculation where set a post cor to frac'l secs 24 T 12 N R 7 E & 19 T 12 N R 8 E from which a Gum 30 ins dia brs N 10½ E 21 lks & a Willow 12 ins dia brs N 60¼ W 39 lks

44.00 A Willow 12 ins dia

80.00 Set a post cor to secs 13 & 24 T 12 N R 7 E from which a Gum 24 Ins dia brs N 89½ W 38 lks & a Box Elder 6 ins dia brs S 7¾ W 36 lks

52

Land low wet & unfit for cultivation
Timber Gum Willow Cottonwood & Elm
Ungth Some cane.

North along East side of Sec 13 T 12 N R 7 E

15.06½ Cottonwood 14 ins dia

40.00 Set ¼ sec post from which a Cottonwood 9 ins dia brs S 37 E 12 lks & a Gum 8 ins dia brs N 51 W 8 lks

46.50 A Gum 14 ins dia

80.00 Set post cor to secs 12 & 13 T 12 N R 7 E from which a Cypress 7 ins dia brs N 63¼ W 20 lks & a Willow 11 ins dia brs S 24½ W 4 lks
Land low, wet and unfit for cultivation

Timber Gum, Oak Hickory Cottonwood Ash Willow & Small Cypress
Ungth. Some cane, vines & briars.

North along East side of secs 12 T 12 N R 7 E
16.09 A Willow 10 ins dia
40.00 Set ¼ sec cor post from which a Willow 10 ins dia brs S 27 W 32 lks & a Willow 8 ins dia brs N 16 W 11 lks
48.16 A Cypress 6 ins dia
80.00 Set a post cor to secs 1 & 12 T 12 N R 7 E from which a Willow 10 ins dia brs S 17 W 35 lks and a Cypress 6 ins dia brs N 32 W 60 lks
53

Land principally covered with water and unfit for cult'n
Timber Willow Cottonwood & Small Cypress
Ungth Elbow & privy bushes

OCT. 21, 1840.

North along the East side of Sec 1 T 13 N R 7 E
11.30 A Cypress 6 ins dia
40.00 Set ¼ sec cor post from which a Cypress 8 ins dia brs S 82 E 14 lks and a Willow 6 ins dia brs N 32 W 42 lks
52.54 A Willow 8 ins dia
80.00 Set cor to secs 1-6-31 & 36 & to Township 12 & 13 N ranges 7 & 8 East from which a
Willow 8 ins dia brs N 32 W 1.05 chs and a Willow 10 ins dia brs N 62 E 1.65 chs and a Willow 6 ins dia brs S 32 E 75 lks
No other bearing tree convenient
Land principally covered with water and unfit for cultivation
Timber principally willow
Ungth. Elbow & privy

OCT. 22ND, 1840.

54

South boundary of Township 13 North Range 7 East N 89¼ W on a random line along the South side of Sec 36 T 13 N R 7 E
5.75 Intersected large body of Sunk land on left bank of the right hand chute of Little river
65.00 The left bank of the right hand chute of Little river 9.50 chs wide runs S W
80.00 Set tempy cor to secs 35 & 36 T 13 N R 7 E

N 89¼ West on random line along South side of sec 35 T 13 N R 7 E
40.00 Set temporary ¼ sec cor post
80.00 Set post Tempy cor to secs 34 & 35 T 13 N R 7 E

N 89¼ West on random line along the South side of Sec 54 T 13 N R 7 E

40.00 Set temporary ¼ sec cor post

80.00 Set post tempy cor to secs 33 & 34 T 13 N R 7 E

Nov. 17th, 1840.

85

Set post cor to secs 33 & 34 T 13 N R 7 E from which a Maple 12 ins dia brs N 77 E 28 lks and a Maple 12 ins dia brs N 36¼ W 41 lks.

* * * * * *

55

East on a true line along South side of Sec 34 T 13 N R 7 E

30.71 Willow 10 ins dia

40.00 Set ¼ sec cor post from which a Willow 15 ins dia brs N 59 W 50 lks & a Willow 12 ins dia N 49½ E 26 lks

50.66 Willow 10 ins dia

80.00 Set post cor to secs 34 & 35 T 13 N R 7 E from which a Willow 18 ins dia brs N 58 W 53 lks & a Willow 12 ins dia brs N 25½ E 11½ lks

Land principally covered with water & unfit for cultivation

Timber willow cottonwood and small Ash & Cypress

Ungth. Elbow bushes

East on a true line along south side of Sec. 35 T 13 N R 7 E

27.53 Gum 24 ins dia

40.00 Set ¼ sec cor post from which a Cottonwood 24 ins dia brs N 31½ W 34 lks and a

Maple 10 ins dia brs S 88½ W 35½ lks

54.73 A Gum 12 ins dia

80.00 In Sunk lands, navigable.

Set a post cor to secs 35 & 36 T 13 N R 7 E from which a Cypress 12 ins dia brs S 5¼ W 4.88 chs marked B T.

Land low wet and unfit for cultivation

Last four tallies covered with water.

56

Timber, Willow, cottonwood small cypress & Ash

Ungth. none.

East on a true line along the South side of Sec 36 T 13 N R 7 E

5.56 To right bank of right hand chute of Little river runs S W

15.00 Across the current to the left bank of the right hand chute of Little river distance across obtained by calculation.

40.00 In sunk lands, No cor set
74.25 To the E side of the principal body of Sunk lands where set a post cor to frac'l secs 36 T 13 N R 7 E & 1 T 12 N R 7 E from which a Willow 8 ins dia brs S 70 E 32 lks. & a Willow 6 ins dia brs N 62 E 45 lks.
80.00 To the cor to Townships 12 & 13 N Ranges 7 & 8 East
Land principally under water from 1 to 3 feet deep
Timber Willow & Small cypress
Ungth privy bushes.

Nov. 19TH, 1840.

57

429

East boundary of Township 12 North Range 6 East Var 8° East
North along the East side of Sec 36 T 12 N R 6 E of 5th principal Mdn.
7.31 A Gum 16 ins dia
35.85 A Gum 18 ins dia
40.00 Set a ¼ sec cor post from which an Overcup Oak 7 ins dia brs S 34 E 11 lks & an
Overcup Oak 6 ins dia brs N 37½ W 3 lks
47.64 A Cow Oak 10 ins dia
67.00 Intersected Sunk lands on the left bank of the right hand chute of Little River, *nagivable*, where set a post cor to fracl. secs 36 T 12 N R 6 E & 31 T 12 N R 7 E from which a Willow 12 ins dia brs S 9 E 27 lks. & a Cypress 6 ins dia brs S 36½ W 8 lks
80.00 The river is here disper-ed in many directions through the sunk lands without any particular channel
No cor set. Land S of Sunk lands low wet & unfit for cultivation
Timber Gum Oak & Willow
Ungth. Privy & vines.

North along the East side of Sec 25 T 12 N R 6 E of 5th principal meridian
22.86 To the right bank of the right hand chute of Little river, dist

58

across obtained by measurement, where set a post cor to frac'l secs 25 T 12 N R 6 E & 30 T 12 N R 7 E from which a
Cypress 10 ins dia brs N 12 W 9 lks & a Cypress 9 ins dia brs N 66 E 22 lks
30.06 A Willow 10 ins dia
40.00 Set a ¼ sec cor post from which a Willow 6 ins dia brs N 75 E 15 lks & a Cypress 6 ins dia brs S 25 W 75 lks
75.00 A Cypress 6 ins dia

269

80.00 Set a post cor to secs 24 & 25 T 12 N R 6 E from which a Willow 10 ins dia brs N 37½ W 95 lks & a Willow 6 ins dia brs N 83 W 17 lks
Land low wet & unfit for cultivation
Timber Willow & small cypress
Ungth privy & vines.

North along the East side of Sec 24 T 12 N R 6 E
15.50 Intersected large body of sunk lands on the E side of St. Francis river bearing N & S navigable where set a post cor to frac'l secs 24 T 12 N R 6 E & Sec 19 T 12 N R 7 E from which a
Cypress 8 ins dia brs S 89 W 13 lks & a Cypress 6 ins dia brs S 62 E 27 lks
Thence offset E 25.00 chs
" " N 22.50 "

59

Thence offset E 30.00 chs
" " N 42.00 "
" " W 4.68 " The
E side of Sunk lands navigable where set a witness cor from which a Willow 6 ins dia brs N 32 E 17 lks & a Willow 8 ins dia brs S 60 E 40 lks
Land—On the south side of sunk land low wet & unfit for cultivation
Timber willow & small cypress
Ungth none

OCT. 15TH, 1840.

423

Set post to secs 1, 6 31 & 36 and to Townships 11 & 12 N Ranges 6 & 7 E from which an Ash 10 ins dia brs N 17 E 15½ lks & a Willow 12 ins dia brs S 51 W 40½ lks & a Willow 10 ins dia brs N 40½ W 33 lks and an Ash 10 ins dia brs S 46½ E 28½ lks.

Dec. 15th, 1848 I run
East on a true line along the south side of Secs 31 T 12 N R 7 East
38.01 Set ¼ sec cor post from which a Gum 24 ins dia brs N 10 W 35½ lks & a Red Oak 12 ins dia brs N 21½ E 30 lks
78.01 Set a post cor to secs 31 & 32
T 12 N R 7 E from which an

60–78

Elm 12 ins dia brs N 42½ E 6 lks & an Elm 7 ins dia brs N 58¼ W 39 lks
Land 1st ½ mile principally covered with water, remainder low wet and unfit for cult'n
Timber Gum Oak Ash Willow & Elm
Ungth cane vines willow & Elbow bushes.

STATE OF ARKANSAS:

Office of State Land Commissioner, Little Rock.

I, L. L. Coffman, Commissioner of State Lands for the State of Arkansas hereby certify that the foregoing pages 3 to 60 inclusive contain a true and correct copy of the Field Notes for that part of Twp. 12 N. R. 7 E. as is called for in the index, as the same appears in the original Field Note book of said Twp. now on file in this office.

Witness my hand and official seal this 14th day of Nov. 1907.

[SEAL.] LAFAYETTE L. COFFMAN,
Com. State Lands.

(Here follow diagrams marked pages 79, 80, 81, and 82.)

Endorsed on cover: File No. 22,839. Arkansas Supreme Court. Term No. 82. Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, plaintiffs in error, vs. The Board of Directors, St. Francis Levee District. Filed August 18th, 1911. File No. 22,839.

3

Office Supreme Court, U. S.
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—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1913.

CHAPMAN AND DEWEY LUMBER COMPANY AND CHAPMAN AND DEWEY LAND COMPANY, *Plaintiffs in Error,*
vs.
BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, *Defendant in Error.*

No. 82.

In Error to the Supreme Court of the State of Arkansas.

Statement, Specification of Errors, and Brief for Plaintiffs in Error.

HENRY D. ASHLEY,
WILLIAM S. GILBERT,
For Plaintiffs in Error.

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vs.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, *Defendant in Error.*

No. 82.

In Error to the Supreme Court of the State of Arkansas.

Statement, Specification of Errors, and Brief for Plaintiff in Error.

STATEMENT.

On or about the 31st day of August, 1907, suit was commenced by Board of Directors St. Francis Levee District, defendant in error here and plaintiff below, who will hereafter be designated as Plaintiff, against the Chapman & Dewey Lumber Company, defendant below and plaintiff in error here, who will hereafter be designated as defendant, in the Circuit Court of Poinsett County, Arkansas, by the filing of a complaint which was and is in words and figures as follows:

"IN POINSETT CIRCUIT COURT.

Board of Directors of St. Francis Levee
Dsitrict, *Plaintiff*,
v.
Chapman & Dewey L'b'r. Co., *Defendant*.

Plaintiff states that the defendant is a corporation organized under the laws of the State of Missouri and engaged in the lumber business in the State of Arkansas.

That the defendant, beginning about the Fall of 1904, and continuing until the Summer of 1907, at various times entered upon the lands of the plaintiff, to-wit: Sections 14, 15, 22 and 23 in Township 12 N., R. 7 E., and cut therefrom 2,400 Cottonwood Trees, amounting in all to 4,696,800 feet.

Plaintiff states that the said timber was cut from these lands which were left unsurveyed by the United States Government but which would have been, if surveyed out, in the sections aforesaid.

Plaintiff states that it owns said lands by virtue of the Act of Congress of September 28th, 1850, granting all swamp and overflowed lands to the State of Arkansas, and by Act of the Legislature of the State of Arkansas of 1893 conveying to the plaintiff all of said lands.

Plaintiff states that said timber was worth the sum of Four Dollars ($4.00) per thousand, being in all the sum of $19,764.00.

Plaintiff states that the defendant entered upon said lands knowingly and willfully and without any just claim or right thereto, and without any probable cause on the part of the defendant to believe that the said lands so trespassed upon were its own.

Said plaintiff states that under the Statute of the State of Arkansas it is entitled to recover three times the value of said timber. Wherefore it prays judgment for the sum of $59,352.00 and for all costs and all other proper relief.

JEFF DAVIS,
H. F. ROLESON,
Attorneys for Plaintiff."

The answer to said complaint (in which answer the above named Chapman & Dewey Land Company joined as co-defendant) was filed on or about the 24th day of October, 1907, and thereafter the said cause was, by order of the said Circuit Court of Poinsett County, transferred to the Chancery Court of said Poinsett County, Arkansas, that being a court of equity.

Said answer filed in said cause showed a license from said Chapman & Dewey Land Company to said Chapman & Dewey

Lumber Company to cut timber on the land mentioned in the complaint and specially set up and claimed title in said Chapman & Dewey Land Company to said land from which timber was in said complaint alleged to have been cut, by showing that according to the official returns of the surveys made under authority of the United States, in Township Twelve (12) North, Range Seven (7) East, in Poinsett County, Arkansas, the place from which said timber was alleged to have been taken, was at the date of said surveys, not land, but, as alleged in said answer, "an open lake about two miles wide from east to west in the widest place and having an extreme length of about three miles from north to south." Upon the said surveys, as alleged in said answer, said lake was designated and marked "Right Hand Chute of Little River," "Sunk Lands;" defendant alleging ownership in said Chapman & Dewey Land Company of the surveyed and sectionalized lands as shown by said official surveys and the plat thereof, meandered on said lake so shown by said survey; and said answer specifically describing the surveyed and sectionalized tracts of land so owned by said Chapman & Dewey Land Company and alleging that all said tracts of land "were meandered upon the margin of said lake, the plats and field notes calling for the lake as a boundary, and the center of said lake and not the meander line aforesaid is the boundary thereof. The said lake has long been known as Bark Camp Lake."

Defendant further alleged in their said answer that since the date of said surveys the bed of said lake has been gradually raised by the annual deposit of sediment thereon and by other causes, and that much land has been thereby raised above the surface of the waters of said lake and that said Right Hand Chute of Little River and said lake are and always have been unnavigable waters.

And defendant specially set up, claimed and asserted in their said answer that "under and by virtue of the official record of said surveys, made under authority of the United States, by virtue of the laws of the United States, and especially the Act of Congress of September 28th, 1850, known as the Swamp Land Grant, and under and by virtue of the patents issued by the United States and a correct construction thereof, and the rulings of the Commissioner of the General Land Office of the United States and of the Secretary of the Interior with special reference to this land

and the adjudications of the Supreme Court of the United States, the defendant, Chapman & Dewey Land Company, was and is the owner of all of the bed of said 'Right Hand Chute of Little River' and 'Sunk Lands' within and towards the water from said meander lines thereof."

At the trial of said cause in said Chancery Court of Poinsett County, it was admitted in written stipulations filed therein, "That the State of Arkansas, not having previously alienated any of the lands hereinafter described, in 1871, by its patents or deeds, conveyed to Moses S. Beach all the following tracts of land situate in Poinsett County, Arkansas, to-wit: All of Sections One (1), Two (2), Three (3), Ten (10), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Nineteen (19), Twenty-one (21), Twenty-two (22) and Twenty-three (23), all in Township Twelve (12) North, Range Seven (7) East" and it was further admitted in said stipulations "That all the right, title and interest so acquired by Moses S. Beach to all the land above described has become and is now vested in the Chapman & Dewey Land Company, without restriction, reservation or condition." The above named Sections 14, 15, 22 and 23 being the sections of which it was alleged in the complaint "that the said timber was cut from these lands which were left unsurveyed by the United States Government but which would have been, if surveyed out, in the sections aforesaid."

In support of the allegations contained in the answer, defendant introduced in evidence the duly certified copy of the official plat of the survey of said Township Twelve (12) North, Range Seven (7) East (see third plat bound in transcript at back) made under the direction of the General Land Office of the United States, together with certified copies of the official field notes of the several surveyors who made said survey, (see page 240 to 267 transcript) said plat showing, by the given acreages marked on the several subdivisions of land indicated thereon, that the total number of acres in said township was 14,329.97, which number of acres excluded all of said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands" as aforesaid; and the return of the Surveyor of Public Lands to the General Land Office expressly stated on the face of said plat that the sum of all the areas on said township plat was 14,329.97 acres as aforesaid. Defend-

ant also introduced a duly certified copy of the selection by the State of Arkansas of swamp land under the Act of Congress of September 28th, 1850, known as the Swamp Land Grant, (see p. 207-08 Transcript) which selection was approved by the Secretary of the Interior in 1853, and showed that the land selected and approved in said Township Twelve (12) North, Range Seven (7) East, comprised 13,815.67 acres, which computation of acreage corresponded exactly with the sum of all the areas as returned on said plat and above stated, after deducting therefrom School Section 16 (Sixteen) which could not be selected under said Swamp Land Grant and which computation of area excluded said Section Sixteen (16) and said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands."

Defendant also introduced in evidence the patent from the United States to the State of Arkansas, of date of September 27th, 1858, conveying by the following description, to-wit: "Township Twelve North, of Range Seven, East. The whole of the township (except section sixteen) containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre, according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General;" which computation of area corresponded with the area of said township as returned upon said plat of survey after deducting said section sixteen, as aforesaid, and excluded said section sixteen and said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands."

And ~~plaintiff~~ defendant contended that by reason of said surveys made under authority of the United States and officially returned to and approved by the General Land Office of the United States and by reason of said selection by the State of Arkansas and said approval thereof by the Secretary of the Interior of the United States, and by reason of said patent, based on said survey, and under the laws of the United States contained in the several Acts of Congress affecting the matter in controversy, the State of Arkansas never selected as Swamp Land inuring to it under said Swamp Land Grant the unsurveyed area meandered and delineated as water by the official surveyors who surveyed said Township 12 North, Range 7 East, and by them designated "Right Hand Chute of Little River" and "Sunk Lands;" and that the United States

never patented said unsurveyed area to the State of Arkansas as Swamp Land, and that said State never acquired any title to said unsurveyed area other than its title to the same by virtue of riparian rights growing out of its ownership of the surveyed sectionalized and selected lands in said township conveyed to it as aforesaid by said patent from the United States; which riparian title passed to said Moses S. Beach by the State's patent of the shore land around said lake marked and shown as "Right Hand Chute of Little River" and "Sunk Lands," and thereafter became vested in Chapman & Dewey Land Company, as owner of the said shore lands, and that the said Plaintiff, the Board of Directors of the St. Francis Levee District, was and at all times had been without title to the same as donee of the State of Arkansas, and was therefore without cause of action against defendants or either of them.

On or about the day of October, 1910, said Chancery Court, after a trial of said cause, rendered a judgment and decree therein against defendants, Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, for the sum of $2,801.16, from which judgment and decree defendants prosecuted an appeal to the Supreme Court of Arkansas and after a hearing in said cause, said Supreme Court on or about the fifth day of June, 1911, affirmed the judgment of said Chancery Court and entered final judgment and decree against your petitioners. And said judgment and decree of said Supreme Court was based upon an option of said Court filed in said cause wherein it was held, in substance, (see P. 218, Transcript) that because said meandered lake marked on the said official plat "Right Hand Chute of Little River" and "Sunk Lands" bore said designation "Sunk Lands" on said plat, it was not to be treated or construed as a lake but as land at the date of said survey and therefore, although not sectionalized and surveyed, it passed as swamp land under the selection, approval and patent of said township as a whole, from the United States to the State of Arkansas, and that under an Act of the Legislature of Arkansas in 1893, all of said unsurveyed area so marked "Right Hand Chute of Little River" and "Sunk Lands," passed to the Board of Directors of the St. Francis Levee District, notwithstanding that on said plat of survey and in said selection and approval and patent made in accordance with said plat, the quantity of said land stated to be contained in said township and surveyed, selected,

approved and patented, excluded all of said unsurveyed area marked and designated "Right Hand Chute of Little River" and "Sunk Lands" as aforesaid; and also notwithstanding that the State of Arkansas had, long prior to the year 1893, sold and conveyed to Moses S. Beach the several surveyed sections abutting on said unsurveyed area and made fractional by the meander line thereof; said Supreme Court holding further, in said opinion, that said Board of Directors of the St. Francis Levee District was, at the time of the alleged injury complained of, the owner of said unsurveyed area, notwithstanding the compromise and settlement between the United States and the State of Arkansas authorized, ratified and approved by the Acts of Congress hereinafter mentioned.

Said opinion is as follows:

KIRBY, J.:

This case is unlike that of *Little* v. *Williams,* 88 Ark., 37, and is not controlled by the decision therein as contended by appellant. There it was held that a grant of the township of land by a patent from the government by description "according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General, only conveyed the lands as surveyed and designated upon the plat, and did not convey lands under water shown upon the plat as 'lake.'" The court said:

"We do not mean to hold that the unsurveyed land could not have been selected as swamp lands and patented to the State by the use of the proper descriptive terms in the patent. But this was not accomplished by reference to townships, sections or parts thereof according to the plat of the surveys when the unsurveyed land did not appear upon the plats at all. The plats showed it to be water and not land."

In this case the Government plat of the township of land selected by the State as Swamp Lands, approved and patented as such lands in accordance with the map, and "according to the official plats of the survey of said lands returned to the General Land Office by the Surveyor General," shows the land in controversy marked "sunk lands."

It is contended that the meander line itself shows that the "sunk lands" was a body of water and we answer this in the language of the Supreme Court of the United States replying to a like contention:

"But, it is urged that the fact that a meander line was run amounts to a determination by the land department that the sur-

veyed fractional sections bordered upon a body of water, navigable or non-navigable, and that, therefore, the purchaser of these fractional sections was entitled to riparian rights; and this in the face of the express declaration of the filed notes and plats that that which was lying beyond the surveyed sections was 'flag marsh,' or 'impassable marsh and water.' But there is no such magic in a meandered line. All that can be said of it is that it is an irregular line which bounds a body of land, and beyond that boundary there may be found forests or prairie, land or water, Government or Indian reservation." *Niles* v. *Cedar Point Club,* 175 U. S., 300; See also, *Keen* v. *Calumet Canal & Imp. Co.,* 190 U. S., 452.

At the time of the survey it was doubtless covered with water to a greater depth than the adjoining lands, increasing in depth as the bed of the stream was approached and undoubtedly not sectionized because of the water and the character of the land indicating its absolute unfitness for cultivation. The outside boundaries of the entire township are fixed, and the lands marked "sunk lands" upon the plat are within such outside fixed boundaries and shown to be so, and are clearly designated by reason of the meander line dividing the unsectionized sunk land from the surveyed and platted lands. The whole township having been selected by the State as swamp lands and the selection having been duly approved and the entire township patented to the State as swamp lands, with the exception of section 16, denominated "School Lands" which passed by another grant, and the unsurveyed lands shown by the plat to be land and not water, and in fact not being a lake but temporarily under water, and by the "remarks" and field notes of the Government surveyors who made the original surveys shown to be low, wet and unfit for cultivation, we hold that the entire township, except said section 16, passed to the State by the swamp land grants and terms of said patent, as swamp lands. This regardless of the fact that the quantity of land contained in the township was stated in the patent and accounted for in the lands laid off in sections and subdivisions, since quantity in cases of this kind is regarded merely a part of the description and rejected if it be inconsistent with the actual area when the same is indicated and ascertained by known monuments and boundaries. 3 Wash. Real Property, sec. 2322; 2 Devlin on Deeds, sec. 1044; *Doe* v. *Porter,* 3 Ark., 60; *Newson* v. *Pryor, Lessee,* 7 Wheat., 7; *Towell* v. *Etter,* 69 Ark., 34.

The unsurveyed, or the lands designated by the meander line and not laid off in sections and subdivisions thereof did not pass as contiguous to the surveyed lands by riparian right, but by being delineated on the map and included within the outside boundary lines of the township as fixed and designated by the Government. Said unsurveyed, or lands not sectionized, not being a lake or body

of unnavigable water, could not pass by riparian right of ownership with the lands bordering upon the meander line thereof, and did not pass to the State's grantee who purchased lands, sections and parts of sections, according to the map and plat of the Government which showed said lands so granted to be limited to the sections and subdivisions thereof as bounded by the meander line separating the said sunk lands from them. All the lands owned by the State were granted to the St. Francis Levee District in 1893 by act of the General Assembly, and this included and passed the State's title to all of these unsectionized sunk lands acquired by the State as swamp lands and designated as "sunk lands" on the Government plat thereof.

This grant to the Levee Board having been made prior to the State's settlement with the Government and relinquishment of its right to all the remaining swamp lands to which it may have had claim under the swamp land grant, was not affected by such settlement. It follows that the title to the whole township having passed to the State, that portion thereof not platted and designated as sections and parts of sections, not having been granted by the State to its purchasers under whom appellant claimed the right to take the timber therefrom, it still remained in the State and passed to and became the property of said district by said grant of 1893.

The District being the owner of the land had the right to maintain an action against appellant for taking the timber therefrom, and there being testimony sufficient to show that timber of the value of the amount found due and for which judgment was rendered was taken, the judgment will be affirmed.

Chief Justice McCulloch, dissenting.

Dissenting Opinion.

In the Supreme Court of Arkansas, July 10, 1911.

No. 101.

CHAPMAN & DEWEY LBR. CO.

v.

BOARD DIRECTORS, ST. FRANCIS LEVEE DIST.

MCCULLOCH, C. J.:

The facts of this case bring it, according to my views, within the rules of law announced in *Little* v. *Williams,* 88 Ark., 37, and I think that case should control. The court has, in attempting to distinguish the two cases, made a distinction without a substantial difference and, as much as I dislike to see decisions overruled which constitute rules of property, it seems to me it would have been infinitely better to overrule the former decision than to leave to law

in hopeless uncertainty by adopting a line of distinction which is too fragile to serve as a guide in the future.

The first point of distinction sought to be made is that in *Little* v. *Williams* the *locus in quo* had been designated on the plat of the public survey as a lake, and in the present case it was designated as "Sunk Lands." In each instance it was unsurveyed, as indicated by the plat and on the field notes. It is manifest that the surveyors in marking the words "Sunk Lands" meant to designate a body of water. A careful study of the field notes makes it plain that such was the intention and the history of those formations caused by the earthquake of 1811-12 confirms it. Lands which were sunken by that great convulsion of nature became, of course, covered by water and constituted lakes though sometimes designated by the other name to indicate the method of formation.

If the words of designation "Sunk Lands" meant a body of water it was the same as if marked lake, and falls squarely within the doctrine of *Little* v. *Williams*.

The distinction sought to be made as to the question of conveyance by township, is, I think, equally untenable. The only difference is that in *Little* v. *Williams* the unsurveyed *locus in quo* indented the outer boundaries of the township, while in the present case it runs through the township. The point of the decision in *Little* v. *Williams* was that a description by reference to the plat of a township conveyed only the surveyed land in the township. The views now expressed by the majority entirely disregard the effect of the former decision and, I think, necessarily overrules it.

No statement of oral evidence, (see p. 7 to 206 of transcript) is made.

First. Because it is all an attempt to show by present conditions long subsequent to surveys, which were made in 1840 and 1841, that a mistake was made in the surveys. Most of the witnesses testified in regard to timber cutting only, and of those who testified about present condition of *locus in quo* only one had known it for any length of time, and that witness Sage not earlier than 1874. This being a suit by the St. Francis Levee Board against Chapman & Dewey Lumber Company for cutting timber on area in Township 12, Range 7, marked "Right Hand Chute of Little River" and "Sunk Lands." No one but the Land Department of the United States can question the correctness of these surveys, and even if the plaintiff could have shown such mistake the only possible result would be to put the title to the land from which this timber was cut not in Plaintiff but in the United Staes.

Second. Because the opinion is based on the meaning of the words "Sunk Lands" on the official plat of Township 12 North, Range 7 East, the *locus in quo,* from which the timber is alleged

to have been cut, and upon the "whole Township theory," that is to say upon the theory that the whole of the area within the outside lines of such Township surveyed and unsurveyed, land and water, passed to the State of Arkansas by the Act of September 28th, 1850, and the Patent of the United States to the State of Arkansas, by following description, to-wit: "Township Twelve North, of Range Seven East. The whole of the Township (except section 16) containing thirteen thousand eight hundred and fifteen and sixty-seven hundredths of an acre, according to the official plats of survey of said lands returned to the General Land office by the Surveyor General," which computation of area corresponded with the area of said Township as returned upon such plat and survey after deducting said Section Sixteen (16) as aforesaid; and excluded said Section Sixteen (16) and said unsurveyed area marked "Right Hand Chute of Little River" and "Sunk Lands."

SPECIFICATION AND ASSIGNMENT OF ERRORS.

First. Said Supreme Court of Arkansas erred in entering judgment affirming the judgment and decree of the Chancery Court of Poinsett County, Arkansas, against the plaintiffs in error, defendants in said Chancery Court.

Second. Said Supreme Court erred in not reversing the said judgment and decree of the Chancery Court of Poinsett County, Arkansas, aforesaid.

Third. Said Supreme Court erred in holding that the unsurveyed area on which timber was alleged in the complaint to have been cut, belonged at the time of said alleged cutting to the defendant in error, Board of Directors St. Francis Levee District, and not to the plaintiff in error, Chapman & Dewey Land Company, nor to the United States.

Fourth. Said Supreme Court erred in holding that the unsurveyed area aforesaid was not, at the time of said alleged cutting of timber thereon, the property of the plaintiffs in error Chapman and Dewey Land Company.

Fifth. Said Supreme Court erred in holding that said unsurveyed area was selected by the State of Arkansas as swamp land inuring to it under the Act of Congress of September 28,

1850, known as the Swamp Land Grant, and was patented to the State of Arkansas by the United States as swamp land inuring to said State under said Act of Congress; and in holding that it, therefore, never belonged to the State of Arkansas nor to the plaintiff in error Chapman & Dewey Land Company, as riparian owner thereof.

Sixth. Said court erred in holding that the words "sunk lands" were intended to indicate or did indicate land and not water, such term having universally been used on plats of townships within the territory affected by the New Madrid Earthquake as synonymous with the word lake, same frequently appearing on plats of townships in that region as "Sunk Lands or Lake."

Seventh. Said Supreme Court erred in so construing the official plat of the survey of Township Twelve (12) North, Range Seven (7) East, in Poinsett County, Arkansas, made under the authority of the United States, and duly and officially returned to the General Land Office, as to hold that the unsurveyed area from which said timber was alleged to have been cut, is shown on the face of said official plat to have been land at the date of said survey and not a permanent body of water or lake; and that said unsurveyed area was not, on said plat, excluded from, but was included in the land areas marked and shown on said plat.

Eighth. Said Supreme Court erred in holding that the patent from the United States to the State of Arkansas of date of September 27, 1858, conveying the land described by the following description, to-wit: "Township Twelve, North, of Range Seven, East. The whole of the township except Section 16; containing 13,815 67/00 acres, according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General," did not exclude, but included, described, and conveyed to said State, as land in place, and not by riparian right, all of that unsurveyed area shown and meandered as water on said plat of survey, notwithstanding said unsurveyed area is, on the face of said plat, excluded from all land areas thereon.

Ninth. Said Supreme Court erred in not holding that by virtue of the said official survey made and returned as aforesaid under the authority of the United States, and upon a proper construction of the official plat thereof, and of the selection thereunder

by the State of Arkansas, and the approval thereof, and of said patent of September 27, 1858, from the United States to the State of Arkansas describing the land granted and conveyed according to said official plat of survey, the title to the unsurveyed area shown and meandered on said official plat as water and designated "Right Hand Chute of Little River" and "Sunk Lands" on said plat, passed to the State of Arkansas as riparian owner, and therefor in not holding that, by *mesne* conveyance from said State, of the fractional sections abutting on said water so shown, the plaintiff in error, Chapman & Dewey Land Company, by operation of the law of riparian rights, was the owner, at the date of the alleged cutting of said timber, of the unsurveyed area mentioned in said complaint on which said timber was therein alleged to have been cut.

Tenth. Said Supreme Court erred in this: that, after finding from an erroneous construction of said official plat of United States Government survey, that said unsurveyed area was land in place and not (as shown thereon) a body of water or lake at the date of said survey, it nevertheless held the title to said unsurveyed area to be, not in the United States, but in the Board of Directors of the St. Francis Levee District as donee of the State of Arkansas; such holding (based on such finding) being repugnant to and in conflict with the Act of Congress of April 29, 1898, ratifying the compromise and settlement of February 23, 1895, between the United States and the State of Arkansas, whereby the said State released and quit claimed to the United States all claims adjusted and unadjusted, growing out of the swamp land grant of 1850, as evidenced by an Act of the General Assembly of said State of March 10, 1897, with relation thereto; and such holding of said Supreme Court being in conflict with and repugnant to said compromise and settlement duly entered into through the duly authorized officers of the United States and the State of Arkansas under an Act of the General Assembly of said State of April 8th, 1889, and under an Act of Congress of August 4th, 1894, entitled "An act to authorize a compromise and settlement with the State of Arkansas;" by the terms of which said compromise and settlement of February 23, 1895, the State of Arkansas expressly relinquished to the United States all claim to land not therefore patented, approved or confirmed by the United States to said State under the swamp land grants of the United States.

FEDERAL QUESTIONS.

1. Whether upon a proper construction of said surveys made under authority of the Uuited States and of the official plats and field notes thereof returned to and approved by the General Land Office of the United States, and of said selection by the State of Arkansas and the approval thereof, and of said patent from the United States, and of the laws of the United States, especially the Act of Congress of September 28th, 1850, known as the Swamp Land Grant, and the Act of Congress of August 4th, 1894, entitled "An Act to Authorize a Compromise and Settlement with the State of Arkansas." and of the compromise and settlement dated February 23rd, 1895, made under authority of said last named Act and duly reported to the Congress of the United States, whereby the said State relinquished and quit claimed to the United States all claims or demands adjusted or unadjusted growing out of the said Act of September 28th, 1850, known as the Swamp Land Grant, and relinquished its claim to all land not theretofore patented, approved or confirmed to the State under the Swamp Land Grant, and of the Act of Congress of April 29th, 1898, ratifying said compromise and settlement, and of the public and official decisions of the Secretary of the Interior construing said official returns of survey, selections and approval, patent, Acts of Congress, and said compromise and settlement, with special reference to the land involved in this controversy the said Board of Directors of the St. Francis Levee District as donee of the State of Arkansas under an Act of the Legislature of that State in the year 1893 ever acquired, as stated in its complaint hereinbefore set out any title to the land from which the timber mentioned in said complaint is therein alleged to have been taken.

2. Whether under said surveys and the official returns thereof, said selection, approval, patent, Acts of Congress, compromise and settlement and rulings of the Secretary of the Interior, the title to said land was not at the time of the alleged injury complained of in this case vested in your petitioners, Chapman & Dewey Land Company, by the operation of the law of riparian ownership.

3. Whether under said surveys and the official returns thereof, said selection, approval, patent, Acts of Congress, compromise and settlement and rulings of the Secretary of the Interior, the

title to said land was at the time last aforesaid in the United States, and whether, therefore, said sum of $2801.16 thus adjudged and decided in favor of the Board of Directors of the St. Francis Levee District, if in equity and justice owing by said Chapman &. Dewey Lumber Company to anyone for timber cut from said unsurveyed area, is not in equity and justice owing to the United States.

4. Does the swamp land patent of whole Township 12 North, Range 7 East, (see page 209 of Transcript) according to Government plats within whose outside boundaries are unsurveyed areas making fractional certain sections meandered on such areas and marked on plat "Right Hand Chute of Little River" and "Sunk Lands" and referring to such Government plats and giving a computation of areas equal to the surveyed sections and fractional sections and excluding from such computations Section 16 and such unsurveyed area, operate to convey as swamp lands to the State of Arkansas the entire area within the exterior township lines, surveyed and unsurveyed, wet or dry, land or water?

5. What is the proper construction to be given to the words "Right Hand Chute of Little River" "Sunk Lands" as appearing on the Government plat of Township 12 North, Range 7 East? Do such words indicate land or water?

BRIEF AND ARGUMENT ON FEDERAL QUESTION.

Whenever the question in any court, State or Federal, is whether the title to land which has once been the property of the United States has passed from the Federal Government, that question must be resolved by the laws of the United States.

Wilcox v. *Jackson*, 13 Pet. 498, 517;
Irvine v. *Marshall*, 20 Howard 558;
Gibson v. *Choteau*, 13 Wall. 92.

Congress alone has, under Art. IV, Sec. 3, of the Constitution, the power to determine the manner of disposing of the public lands, and it has the sole power to declare the dignity and effect of titles emanating from the United States.

United States v. *Gratiot*, 14 Peters, 562;
Bognel v. *Broderick*, 13 Peters, 436;

Downes v. *Bidwell*, 182 U. S. 268;
Kean v. *Calumet Canal & Imp. Co.*, 190 U. S. 466.
Heath v. *Wallace*, 138 U. S. 584.

The decision of the Supreme Court of Arkansas that the entire area of Township 12, Range 7 North, Poinsett County, Arkansas, surveyed and unsurveyed, passed as swamp land to the State of Arkansas by United States Swamp Land Patent (See p. 209 Transcript) is contrary to the right, title, privilege or *immunity* specially set up and claimed by plaintiff in error under a treaty, statute, commission or authority of the United States in this, that the Compromise Agreement of 1898 between the United States and the State of Arkansas leaves the title to these unsurveyed and unpatented lands in the United States and the Land Department in 1908 so decided.

See 30 Stat. at Large U. S. 367;
Vol. 37 L. D. 345;
Vol. 37 L. D. 462.
Gazzam v. *Phillips*, 20 How. 372;
Horne v. *Smith*, 159 U. S., 4;
Niles v. *Cedar Point Club*, 175 U. S. 300.

Plaintiff in error being defendant below, and the opinion of the Supreme Court of Arkansas (See Transcript p. 222) being based on the interpretation of United States Government Plats and "Whole Township Theory," the dismissal of writ of error by this court in case *Chapman & Dewey Land Company* v. *Bigelow*, 206 U. S., 41, has no bearing on the instant case.

It having been decreed by the chancellor that the plaintiff, Board of Directors of St. Francis Levee District, do have and recover of defendants, Chapman & Dewey Lumber Company and Chapman & Dewey Land Company, the sum of $2801.16 and costs, and that decree having been by the Supreme Court of Arkansas in all things affirmed, the federal question in this case is at once apparent, because there is only one possible ground on which defendants could be liable to the plaintiff for cutting this timber and that is on the ground that the Levee Board was and is the owner of the unsurveyed and unpatented *locus in quo* meandered as water and designated on the United States Government plats as "Right Hand

Chute of Little River" "Sunk Lands." The only theory on which the Levee Board could be held to be such owner is the "Whole township theory." That theory as stated in the opinion of the Supreme Court of Arkansas is, that because said meandered lake marked on said official plat, "Right Hand Chute of Little River" "Sunk Lands" bore said designation "Sunk Lands" on said plat, it was not to be treated or construed as a lake but as land at the date of said survey and therefore, although not sectionized and surveyed, it passed as swamp lands under act of September 28, 1850, and selection, approval and patent of said township as a whole, from the United States to the State of Arkansas, and that under an act of the Legislature of Arkansas, of 1893, known as the donation act, all said unsurveyed area passed to the defendant Levee Board. This whole township theory is evidently by its mere statement against the title, right, privilege, and immunity specially set up and claimed by the plaintiff in error under a statute and commission held and authority exercised under the United States. It is entirely contrary to the whole system of public surveys and patents and contrary to the rulings of the Land Department of the United States in its administration of the public lands. The rulings of the Land Department of the United States have been without consistency so far as the rights of riparian claimants are concerned, it having been decided by Secretary Hitchcock in November, 1904, in favor of the riparian claimant and by Assistant Secretary Pierce under Secretary Garfield in 1908, against the riparian claimant in favor of the United States. It has never been held by the Land Department of the United States, however, that anything could pass under United States Government patent except surveyed areas where the patent as in this case referred to the plat; the plats in such cases becoming as much a part of the patent as though written out in full in the patent. *Cragin* v. *Powell*, 128 U. S. 691, and such plats and surveys are not open to collateral attack.

Stoneroad v. *Stoneroad*, 158 U. S. 240;
Russell v. *Maxwell Land Grant Co.*, 158 U. S. 253;
Horne v. *Smith*, 159 U. S. 40.

Nor does the fact that the Supreme Court of Arkansas might have decided this case on some other theory, defeat the jurisdiction of this Court on writ of error, for as decided by this Court, speaking by the Chief Justice in June of this year, where the case was de-

cided on a federal question, the fact that it might have been decided from a non-federal point of view does not afford a basis for holding that it was decided on the latter ground and that this Court has no jurisdiction under Section 709, Revised Statutes.

See *St. Louis & Iron Mountain Ry.* v. *McWhirter*, 229 U. S. 265. Also *Wadkins* v. *Producers' Oil Co.*, 227 U. S. 368.

In the Wilcox case, cited *supra*, Mr. Justice Barbour in the opinion uses the following language: "A much stronger ground however, has been taken in argument. It has been said that the State of Illinois has a right to declare by law that a title derived from the United States, which by their laws is only inchoate and imperfect, shall be deemed as perfect a title as if a patent had issued from the United States, and the construction of her own Courts seems to give that effect to her statute. That state has an undoubted right to legislate as she may please in regard to the remedies to be prosecuted in her courts, and to regulate the disposition of the property of her citizens by descent, devise or alienation. But the property in question was a part of the public domain of the United States. Congress is invested by the Constitution with the power of disposing of, and making needful rules and regulations respecting it. Congress has declared, as we have said, by its legislation, that in such a case as this a patent is necessary to complete the title. But in this case no patent has issued, and therefore by the Laws of the United States the legal title has not passed, but remains in the United States. Now, if it were competent for a state legislature to say that notwithstanding this, the title shall be deemed to have passed, the effect of this would be, not that Congress had the power of disposing of the public lands, and prescribing the rules and regulations concerning that disposition, but that Illinois possessed it. That would be to make the laws of Illinois paramount to those of Congress in relation to a subject confided by the Constitution to Congress only. And the pratical result in this very case would be, by force of State legislation, to take from the United States their own land, against their own will, and against their own laws. We hold the true principle to be this that whenever the question in any Court, State or Federal, is, whether a title to land which had once been the property of the United States *has passed*, that question must be resolved by the Laws of the United States; but that whenever, according to those

laws, the title shall have passed, then that property like all other property in the state, is subject to state legislation so far as that legislation is consistent with the admission that the title passed and vested according to the Laws of the United States."

BRIEF AND ARGUMENT ON THE MERITS.

Decree in favor of plaintiff for $2801.16 and costs must be reversed and judgment rendered in favor of defendant (plaintiff in error) for costs unless on some principle of law plaintiff, St. Francis Levee Board, can be held to have been the owner of unsurveyed *locus in quo* at the time the timber was cut therefrom.

The whole Township Theory is the only one which would put the title in the plaintiff Levee Board. This theory is against numerous decisions of this Court and against the rulings of the Land Department of the United States and the entire system for the survey and disposition of the public lands.

37 L. D. 345;
37 L. D. 462;
Cragin v. *Powell*, 128 U. S. 691;
Little v. *Williams*, 88 Ark., 37.
Gazzam v. *Phillips*, 20 Howard, 372.

TITLE OF RIPARIAN OWNERS.

When in the extension of lines of public surveys a lake is meandered, its area is segregated from the public domain and beds of island non-navigable meandered lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States but to the riparian owners.

Hardin v. *Jordan*, 140 U. S. 371;
Mitchell v. *Smale*, 140 U. S. 406;
Kean v. *Calumet Club*, 190 U. S. 466;
Whittaker v. *McBride*, 197 U. S. 510;
Harrison v. *Fite*, 148 Fed., 781.

The doctrine above announced, is the *Lex Naturae* and Common Law applied to grants by the United States of public lands

bounded and meandered on island streams, lakes and ponds, without reservation or restriction of terms and such grants are to be construed, as to their effect, according to the laws of the State where the land lies.

Hardin v. *Jordan, supra;*
Grand Rapids & I. R. Co. v. *Butler,* 159 U. S. 87.

The Common Law doctrine of riparian rights is fully recognized in Arkansas.

Harrison v. *Fite,* 148 Fed. 781;
Warren v. *Chambers,* 25 Ark., 120;
Rhodes v. *Cissell,* 82 Ark. 367;
Little v. *Williams,* 88 Ark., 37.

If this Court shall resolve the question of jurisdiction in favor of plaintiff in error, it seems to us, that the decree of the Supreme Court of the State of Arkansas must be set aside. This the Court may do either, first, because the title is in the United States; second, because the title is in the Chapman & Dewey Land Company, as admitted owner of the fractional sections surrounding and meandered on the *locus in quo,* or, third, because the title on no theory can be in the Levee Board plaintiff, and therefore, the decree must be reversed because the Levee Board having no title whatever to the land from which the timber was cut, can not recover for the cutting of the timber as alleged in the complaint in this case. Moreover, if this decree is permitted to stand by the dismissal of this writ of error, Chapman & Dewey Land Company must pay the Levee Board $2801.16 for cutting this timber and such satisfied judgment would be no bar to a suit by the United States for cutting this same timber.

In the consideration of the merits of this case we are confronted with two decisions of the Supreme Court of Arkansas diametrically opposed to one another, namely, *Little* v. *Williams,* number 8 on the Term Docket of this Court, and which has been submitted and is now under advisement and reported in the 88 Arkansas, page 37, and the instant case which is reported in Volume 100 Arkansas at page 94.

To show how diametrically opposed to each other these two cases are we quote in parallel columns from the opinion of the Court in the two cases.

LITTLE V. WILLIAMS.

"Description of lands according to terminology employed in the system of governmental surveys and plats of lands is necessarily a reference to the plats of those sruveys; for those terms are meaningless unless so considered with reference to the surveys and plats. There is nothing known of townships, sections, and parts of sections of lands, except such as are described in the plats of the Government surveys. Therefore, giving the word 'township' used in the stipulation of facts the meaning which we must attribute to the parties who employed the term, it has reference to the townships surveyed and platted by the Government surveyors, and means townships according to the surveys and plats. A conveyance of the township 'according to plat of the surveys' does not include lands which do not appear on the plat of the surveys. We do not mean to hold that the unsurveyed lands could not have been selected as swamp lands and patented to the State by the use of proper descriptive terms in the patent; but this was not accomplished by reference to townships, sections, or parts thereof, according to the plat of the surveys, when the unsurveyed land did not appear on the plats at all. The plats showed it to be water and not land."

CHAPMAN & DEWEY LUMBER COMPANY V. LEVEE DISTRICT.

INSTANT CASE.

"The whole township having been selected by the State as swamp lands and the selection having been duly approved, and the entire township patented to the State as swamp lands, with the exception of section 16, denominated 'school lands' which passed by another grant, and the unsurveyed lands shown by the plat to be land and not water, and in fact not being a lake but temporarily under water, and by the 'remarks' and field notes of the Government surveyors, who made the original surveys, shown to be low, wet and unfit for cultivation, we hold that the entire township, except section 16, passed to the State by these swamp land grants and terms of said patent as swamp lands. This regardless of the fact that the quantity of land contained in the township was stated in the patent and accounted for in the lands laid off in sections and subdivisions, since quantity in cases of this kind is regarded merely as part of the description, and is rejected if it be inconsistent with the actual area, when the same is indicated and ascertained by known monuments and boundaries."

We know of no case in any Court of the United States, Federal or State, notwithstanding the vast number that have been decided, that has announced the whole township theory as above set out in the instant case, save only the case of *McDade* v. *Levee District*, 109 La., page 22, unless it be *People* v. *Warner*, 116 Michigan, 228.

Remaining questions on the merits are, is the title still in the United States, or is the title to the *locus in quo* in plaintiff in error,

Chapman & Dewey Land Company, by reason of its admitted riparian ownership in the fractional sections meandered on and surrounding the *locus in quo?*

So far as the Land Department of the United States has power to pass on this question it also has rendered diametrically opposed decisions. Beginning almost as soon as the leading case for the riparian owners, *Hardin* v. *Jordan,* 140 U. S., 371, was decided, May 11, 1892, the Department began rendering opinions, and on application of the St. Francis Levee Board for a survey of lands including the very lands in the instant case, Mr. Secretary Hitchcock, on Nov. 17th, 1902, in an opinion, the original of which had the approval of Mr. Justice Van De Vanter, then Assistant Attorney General for the Land Department, said "When in the extension of the lines of public surveys a lake is meandered, its area is segregated from the public domain and beds of inland non-navigable mea ed lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States but to the riparian owners." For this opinion in full see transcript, p. 111, in case No. 262, *C. & D. L. Co.* v. *Bigelow,* decided in this Court May 13, 1907. From decision of *Hardin* v. *Jordan,* May 11, 1892, down to the 12th of December, 1908, no successful effort was ever made to attack the integrity of the surveys affecting the Arkansas "Sunk Lands," and not until sixty-eight years after those surveys were made was the uniform ruling of the Land Department above referred to departed from. Mr. Assistant Secretary Pierce, under Secretary Garfield, then first said:

"The disposition of the public domain lies within the exclusive jurisdiction of Congress who alone has power to declare how the United States may be divested of its title. From this it follows that unless title has passed out of the United States by reason of the operation of some law of Congress, or by the authorized act of some official done in accordance with the directions of some act of Congress, it still remains in the Government and no mere declaration or expresion of opinion by any executive officer of any of the departments could operate to divest such title."

While we believe the Courts have generally held the doctrine of estoppel as not applicable to the United States, we certainly think that where private rights have accrued and parties have changed

their condition on the faith of the ruling of the Land Department, there should be some consistent continuity to such rulings. Mr. Justice Brown in *Noble* v. *Union Logging Company,* 147 U. S., loc. cit., page 176, says:

"A revocation of the approval of the Secretary of the Interior, however, by his successor in office, was an attempt to deprive the plaintiff of its property without due process of law and was therefore void." And quotes with approval language of Mr. Justice Grier in *United States* v. *Stone,* 2 Wall., 525, 535, as follows:

"One officer of the Land Office is not competent to cancel or annul the act of his predecessor, that is a judicial act, and requires the judgment of a Court."

See also application for survey of G. L. Burns, 23 L. D., 430;
Ex Parte Michael Denody, 11 L. D. 504;
U. S. v. *Bank of Metropolis,* 15 Peters, 377;
Stone v. *U. S.,* 2 Wall., 525.

This timber was cut from the land in question from the fall of 1904 to September, 1907. (See page 2, of Transcript) on the faith of the opinion of Mr. Secretary Hitchcock, dated December 17, 1902, and before the opinion of First Assistant Secretary Pierce rendered December 12, 1908. Oral testimony, such as will be found in this transcript from page 7 to page 207, taken sixty-eight years after the survey in regard to conditions produced by the New Madrid Earthquake in 1811, which created these "Sunk Lands," is not either competent enough nor relevant enough, nor has it sufficient probative force to affect the candid mind of any disinterested judge or even layman as to conditions in 1840 and 1841 when these surveys were made. Pioneers who purchased timber lands in the wild region known as the Arkansas "Sunk Lands" were compelled to purchase on the faith of the United States Government plats. The State patents to Beach (see Transcript, page 221) were dated in 1871.

Mr. Assistant Secretary Pierce, in his letter of February 27, 1909, (see Volume 37 L. D., bottom of page 466, top of page 467), referred to by the Solicitor General of the United States in his suggestions filed in this Court, October 27, 1913, says, "It is not believed that there is any such thing as estoppel against the United States in the absence of express statutory provisions to that effect.

Nor does it appear from the circumstances of this case that any action has been taken by the Government through any of its officers which should operate as an equitable estoppel. Had the riparian claimants purchased fractional tracts soon after the surveys were made, believing that they actually bordered on the water, and without knowledge of the fact that they did not so border on the water but were separated therefrom by no inconsiderable extent of land, they might in that event assert with some reason that they had acquired thereby equitable rights which should not now be disturbed. But such is not the case. The purchase was made comparatively recently with full knowledge of the existing conditions." The record does not disclose when the Chapman & Dewey Land Company received its conveyance from Beach. This conveyance is covered by stipulation. See page 210 of transcript as follows: "2nd. That all the right, title and interest so acquired by Moses S. Beach to all the land above described, has become, and is now vested in the Chapman & Dewey Land Company, without restriction, reservation or condition. Plaintiff in error claims in privity with and as grantees of Beach.

RIPARIAN RIGHTS.

Riparian rights are based upon the common law and are older than this Government, are part of *Lex Naturae,* have no dependence on plats or surveys, and are important legal incidents to grants. If the system of the United States Government surveys had never been adopted and this whole region of the Arkansas "Sunk Lands" were unsurveyed and the existing governmental authority issued a patent or deed describing by metes and bounds, the area surrounding the *locus in quo* marked "Right Hand Chute of Little River" "Sunk Lands," the patent or conveyance would carry the bottom of non-navigable lake or pond if the description by metes and bounds meandered around its border. This both by the common law and by the provisions of section 2476, United States Compiled Statutes of 1901, which has been on the Federal Statute books since 1796 and which was alluded to as affecting this long standing Controversy in the Supreme Court of the United States by the Chief Justice in his dissenting opinion in *Kean* v. *Calumet Canal Company,* 190 U. S. loc. cit., page 480, and again cited by Mr.

Justice Van De Vanter in the recent case, *Scott* v. *Lattig,* 227 U. S., loc. cit., page 229.

Nothing but surveyed area can pass as swamp land because the entire vesting of title has its origin in the act of Congress of September 28, 1850, which, though in the earlier cases described as a grant ***in presenti,*** calls for surveys and selections and patents, and it has been repeatedly held that nothing but a patent will vest the legal title, and these swamp land patents always containing the language "according to Government plats and surveys," such plats and surveys have universally been held as much a part of the patents as though written therein in full.

The mistake in the surveys which prevented the doctrine of *Hardin* v. *Jordan* and cases following from being applied in cases of *Horne* v. *Smith,* 159 U. S. p. 40, and *Niles* v. *Cedar Point Club,* 175 U. S., p. 300, would equally apply to mistake in a metes and bounds description which was based on a private survey or on no survey at all, but called for ancient monuments, such as trees, and so forth, and failed in its courses and distances to go to the water covered area for which the description called.

The question whether areas outside meander lines as marked on Government plats passed as swamp lands under act of September 28, 1850, and surveys, selections, and patents made in pursuance thereof is a pure question of the construction of the Federal Statutes, but the question of whether non-navigable lakes and ponds have passed by riparian right as an incident to a conveyance of bordering lands meandered in any method on such lakes and ponds is a question of common law. It is respectfully suggested that failure to keep this distinction in mind may explain some of the difficulties experienced by a lawyer in following this Court through the mazes of the conflicting case such as *Hardin* v. *Jordan* and cases following, and *Horne* v. *Smith, Niles* v. *Cedar Point* and cases following, and which led to the long dissenting opinion of the Chief Justice, in the case of *Kean* v. *Calumet Club,* 190 U. S., 452.

Respectfully submitted,

HENRY D. ASHLEY,
WILLIAM S. GILBERT,
For Plaintiffs in Error.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1913.

No. 82.

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CHAPMAN & DEWEY LAND COMPANY,
Plaintiffs in Error,

vs.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT,
Defendant in Error.

Brief and Argument for Defendant in Error.

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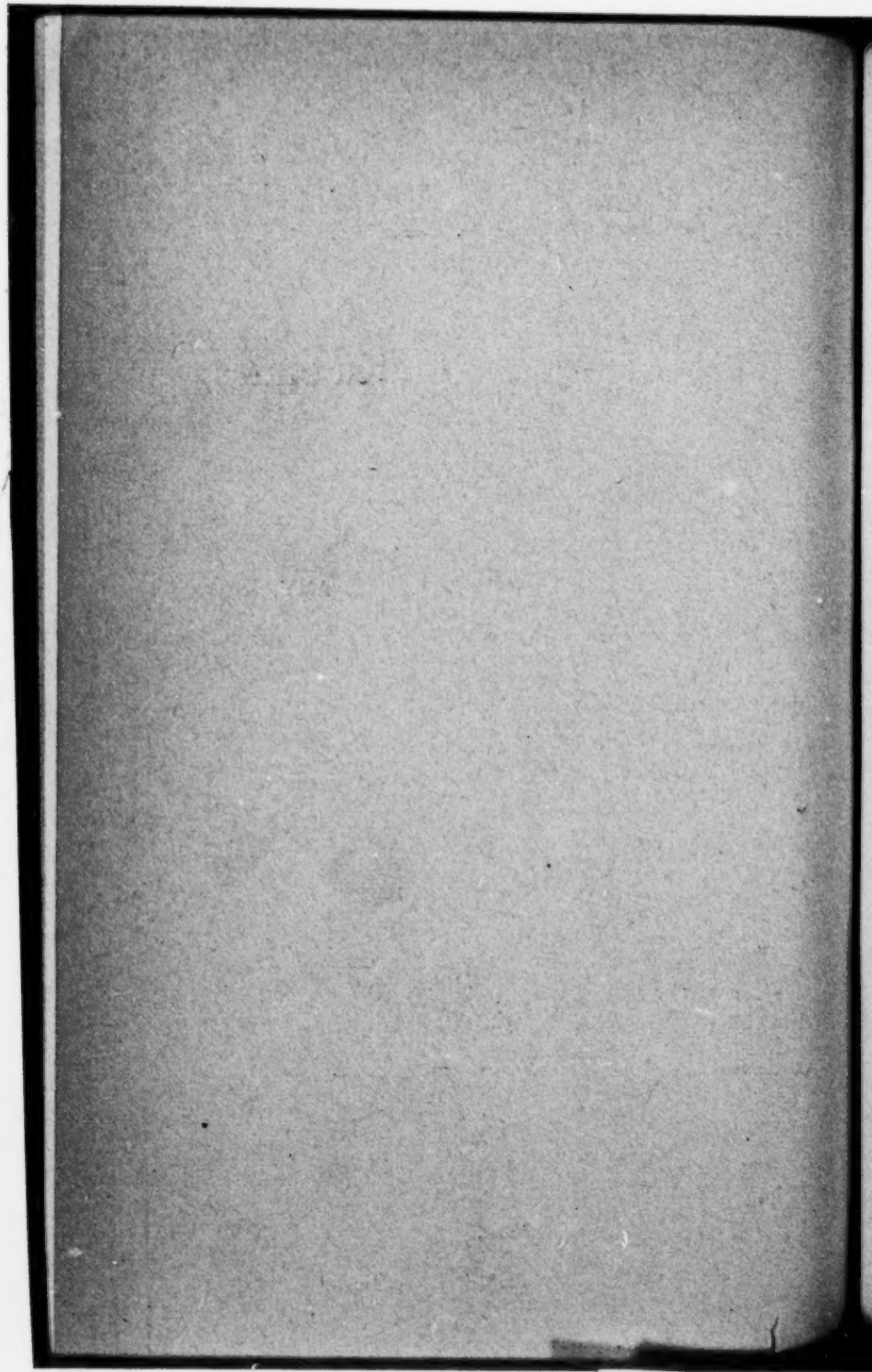

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Brief and Argument for Defendant in Error.

STATEMENT OF FACTS.

The facts in the case, briefly stated, are as follows:

Plaintiffs in error cut timber from certain lands in Township 12 North, Range 7 East, Fifth Principal Meridian, in Poinsett County, Arkansas. The Levee District, claiming to be the owner of said lands, sued plaintiffs in error for the value of the timber cut. Under Arkansas practice the suit was transferred to the equity side of the court, there heard, and a decree was entered in favor of the Levee District. On appeal this decree was affirmed

by the Supreme Court of Arkansas, one justice dissenting. A petition for rehearing was denied and a writ of error sued out from this court.

The *locus in quo* was part of what are popularly known as "sunk lands" in northeastern Arkansas. It seems that in the years 1811 and 1812 the New Madrid earthquake, or series of earthquakes, caused a subsidence of a very considerable area of land in northeastern Arkansas to such an extent that land which was theretofore dry land or at most subject to occasional overflow became swampy and subject to periodical overflow from the Mississippi River. Much of this land, including the land in question, was surveyed in the forties and the surveyors, apparently encountering much difficulty from the swampy condition of the land, meandered out large portions of country, designating many of these meandered out portions as "sunk lands," or as "sunk lands, swamp and overflowed." The township lines and corners were established and the parts of the township not so meandered out and not appearing to be parts of lakes or rivers were divided into sections in the ordinary manner. Matters were in this situation when Congress passed the Swamp and Overflowed Land Act of September 28, 1850, by which Congress granted to the State of Arkansas and other states all swamp and overflowed lands not otherwise disposed of within their respective borders. As all the lands in this entire section of Arkansas came evidently under the description of swamp and overflowed lands, (except perhaps for an occasional partly navigable body of water) the government having no longer any beneficial interest, very nat-

urally made no further surveys. In fact, nothing remained to the government but the duty of issuing patents in accordance with the terms of that act.

The lists of lands made out as selection lists under the Swamp and Overflowed Land Act were made out as whole townships and were in large part approved as whole townships by the Secretary of the Interior. The township in question was so listed and approved when the act of March 3, 1857, was passed confirming title in several states to the lands selected as swamp and overflowed.

Subsequently, under the act of September 28, 1850, a patent was issued from the United States government to the State of Arkansas covering, among other lands, "the whole of" Township 12 North, Range 7 East. At various times the State of Arkansas sold off portions of its swamp and overflowed lands, the sales, however, being apparently restricted to the sectionized area outside the meander lines, for the reason doubtless that there was no authority in the state officers to sell any land except by the acre. The Chapman & Dewey Land Company, through purchase from Arkansas in 1871, and mesne conveyances, became the owners of the sectionized lands surrounding the *locus in quo*, which is part of a large area denominated sunk lands in said Township 12 North, Range 7 East. In 1893 the State of Arkansas formed by legislative act the St. Francis Levee District, a quasi municipal corporation, created for the purpose of building levees, and reclaiming the lands in a large territory in Northeastern Arkansas, including, among a great deal of other land, all of Township 12 North, Range 7 East.

The Levee District was given taxing powers. By a subsequent act, also of 1893, the legislature of Arkansas granted to the Levee District all the lands of the state (except sixteenth sections) within the limits of the district, and provided for the sale of these lands in order to enable the district to raise additional funds for the construction of levees. (Acts of Arkansas, 1893, pp. 172-4.) The district thereafter constructed a levee to keep out the waters of the Mississippi River, which levee was completed in 1897. (See answer of defendants below, printed transcript, p. 7.) In 1898 there having been a number of matters in dispute between the State of Arkansas and the United States government, an agreement of compromise was made, ratified and made effective by the act of Congress of April 29, 1898 (30 Statutes at Large, 367), whereby the State of Arkansas relinquished to the United States all claims under the Swamp and Overflowed Land Act of September 28, 1850, except, among others, to the lands patented, approved or confirmed to the State of Arkansas under the act of September 28, 1850 (9 Statutes at Large, 520), the act of March 2, 1855 (10 Statutes at Large, 634), and the act of March 3, 1857. (11 Statutes at Large, 251.) The material parts of the original agreement of compromise are printed as an appendix to this brief.

By this decree the chancellor found that the lands described from which the timber was cut were shown upon the map and plat to be in Township 12 North, Range 7 East, and as "sunk lands"; that they were in fact land at the time of the original survey by the United States government and at the time of the se-

lection of the township by the governor of the State of Arkansas and at the time of the approval of such selection by the Department of the Interior; that the survey established all the corners of said township and all the exterior lines; tnat in fact Township 12 North, Range 7 East, was surveyed; that the selection by the governor of the State of Arkansas and the approval thereof by the Department (of the Interior) and the patent issued thereunder carried the title to all lands within said township; that the State of Arkansas by legislative act conveyed said lands to the St. Francis Levee District; and that the plaintiffs below were entitled to recover $2,801.16 for the value of the timber cut by the defendants below.

Counsel's statement of fact on page 5 of their brief says that the land selected in Township 12 North, Range 7 East, comprised 13,815.67 acres, which acreage they state corresponds exactly with the sum of the acreages (except Section Sixteen) shown on the plat which they had used in evidence. Counsel seem to be mistaken in this. The gross sum of the areas of the separate pieces above the meander line shown by the plat appears to be 14,549.72 acres. If, following the Land Office's practice (see Printed Transcript, p. 207) we subtract the acreage shown for Section Sixteen, we still get 14,035.42 acres, but the plat gives no figures either for the E. ½ of N. E. ¼ of Section 28 or that part of the S. E. ¼ of Section 30, south of the "Little River." These two together from their size on the plat appear to contain at least 120 acres. It follows that the acreage stated in the approved list and in the

patent was over 300 acres short of the acreage appearing from the plat.

The contention of the defendants below, plaintiffs in error here, as we understand it, is two-fold. First, that by a proper construction of the approved lists and the patent covering Township 12 North, Range 7 East, the land in dispute shown by the government survey to be sunk lands within the exterior boundaries of the township did not pass to the State of Arkansas except as appurtenant to the sectionized lands in said township and that as appurtenant to such sectionized lands the title to the land in question passed to the defendant, Chapman & Dewey Land Company, through mesne conveyances from the State of Arkansas.

Second, that if the land was not the property of Chapman & Dewey Land Company, it remained the property of the United States, the contention of plaintiffs in error being that neither the approved lists nor the patents covered the *locus in quo*, and that therefore the compromise agreement between the State of Arkansas and the federal government, including a relinquishment by the State of Arkansas of all claims under the Swamp and Overflowed Land Act of September 28, 1850 (except such lands as had theretofore been patented or were approved or confirmed under said act of September 28, 1850, the act of March 2, 1855, or the act of March 3, 1857), operated to revest complete title to the *locus in quo* in question in the United States.

In brief, the answer of defendant in error to these contentions is: First, that the title to the whole of

the township, unless it was previously vested in the state, passed to the State of Arkansas under United States patent dated September 27, 1858, the description in said patent being:

> "Township 12, North of Range 7 East.
>
> "The whole of the township (except Section sixteen), containing thirteen thousand eight hundred and fifteen acres and 67/100 of an acre." (See printed transcript, p. 209.)

Second, that the whole of said township was covered by the state selection and the subsequent approval thereof by the secretary of the interior under date of May 11, 1853 (see printed transcript of record, p. 208), and that said selection and approval operated to vest the legal title in the state under the terms of the act of March 3, 1857.

Third, that the Swamp and Overflowed Land Act of September 28, 1850, was a grant in *praesenti;* that title to the various swamp and overflowed lands in the State of Arkansas passed to that state under the terms of the grant; that the title passing to the state was conveyed by the state in 1893 to the Levee District and therefore the action of the state in 1898 in quitclaiming in general terms its remaining claims under the Swamp and Overflowed Land Act could not affect the lands in question.

BRIEF.

I.

COMPLETE TITLE TO THE ENTIRE TOWNSHIP PASSED TO THE STATE OF ARKANSAS UNDER THE SWAMP AND OVERFLOWED LAND ACT OF 1850.

The principal question in this case turns upon the construction of the approved state selection and the patent issued to the State of Arkansas under the Swamp and Overflowed Land Act of September 28, 1850 (9 Statutes at Large, 520; Revised Statutes, 2479). That act granted "the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, 1850," to the several states wherein such lands were situated. There is no question that the *locus in quo*—lands from which the timber sued for was cut—was in 1850 swamp or overflowed land. It is not claimed that this land was disposed of by the United States before that time. It is asserted, however, by defendants in error that the title to the lands in question did not pass to Arkansas because they say that neither the approved selection confirmed by the act of March 3, 1857 (11 Statutes at Large, 251) nor the patent issued to the State of Arkansas under date of September 27, 1858, included these lands.

The decree of the chancellor is shown on pages 212 to 213 of the printed transcript. The chancel-

lor found as a fact that all the corners of the township which includes these lands were established by government surveys at the time of the approval of the state selection by the Department of the Interior. This finding was confirmed by the judgment of the Supreme Court of Arkansas, appearing on page 215 of said transcript, and further by the opinion of that court on page 223 of said transcript (page 387 of the original record.) This fact also appears from the government surveys and plats of this and the surrounding townships of which Arkansas courts take judicial notice. (*Bittle* v. *Stuart*, 34 Ark. 224.) It appears, however, that the land in question was shown on the township plat to be included in an area extending in a northeasterly and southwesterly direction across the township which area is on the plat meandered and bears the label, "Sunk Lands" in the vicinity where the lands in question are shown, and in another place the label "Right Hand Chute of Little River." The section lines of the township stop at this meander line, and plaintiffs in error have contended, as is perhaps most clearly shown in their petition for rehearing (printed abstract, page 217), that "the court erred in ignoring the inner lines of the survey entirely and regarding the outside boundaries alone." In other words, their contention is that lands inside a township do not pass by a patent of the entire township because on the township plat these lands are meandered out. They also have contended that the acreage mentioned as the acreage of Township 12 North, Range 7 East, in the approved selection and in the patent subsequently issued, is the sum of the acreages

above this and other meander lines, and therefore, the approved list and the patent should be restricted to the lands appearing by the plat to lie above the various meander lines. (See counsel's brief, pp. 5 and 15.)

We have pointed out in our statement of facts that the sum of the several areas shown on the plat exceeds the area stated in the patent very materially. It follows that no argument can be successfully based on their assumed agreement.

Our position is that a patent of a whole township under the Swamp and Overflowed Land Act includes all the land within the township whether sectionized or not; that whatever the meaning of the meander lines they did not operate to exclude lands from the township or from the grant to the state, and that the statement of acreage is entirely immaterial. Counsel have not hitherto disputed the finding of the chancellor that the township boundaries were fixed. In addition to this finding both the chancellor in his decree cited above and the Arkansas Supreme Court in its opinion found as a fact that the lands within the meander line in question were at the time of the survey in fact land and not a body of water.

The position taken by counsel for plaintiffs in error seems to be founded on the idea that there is some requirement in the nature of things that the United States cannot convey lands unless those lands have been fully surveyed not only into townships, but even into sections, and we suppose subdivisions of sections. Such a contention is obviously unsound.

There can be no question that the United States may grant its lands by any description which will serve to identify them. Even if it be conceded that if an act of Congress required in express terms a certain sort of survey to be made before patents could issue under the act, no patent issued thereunder to lands not included in such particular kind of survey would be valid, still such is not the case here. The Swamp Land Act did not require that the lands be surveyed into sections or subdivisions, or in fact that they be surveyed at all. The requirement was that the lands be identified as coming within the terms of the act. Such has been the repeated ruling of the land department in regard to Florida where there were tracts of swamp and overflowed land larger in area than many townships. In spite of the fact that these lands had not been surveyed even into townships, the land department repeatedly held that a description identifying the lands would be sufficient for patenting.

In re State of Florida, 8 L. D. 65, 18 L. D. 26, 19 L. D. 251, 24 L. D. 147.

It may be noted also that some of the earlier surveys ordered by Congress in the Northwest Territory provided that only part of the townships should be subdivided.

See 1 Statutes at Large, 465, and generally 38 L. D., 4 *et seq.*

It is a general rule that where the description of lands in a conveyance is clear the entire area within the description will pass and that no exception exists unless that exception is clearly stated.

2 Devlin on Deeds, Sec. 979.

Wendall v. *Fisher,* 187 Mass. 81.

Certainly the description of the whole of a named township is on its face as clear as any description that refers to government surveys can be. No exception is expressed on either the approved list or the patents as shown on pages 207 to 209 of the printed record, but other than the exception of Section 16 which is not here in question, unless indeed either the statement of acreage or the presence of meander lines surrounding "sunk lands" creates such an exception. Indeed it may well be argued that the fact that there is an expressed exception of Section 16, part of which by the way, lies within the meander lines in question, itself under the well known rule of construction shows that no other exception was intended.

In the case of *Mitchell* v. *Smale,* 140 U. S. 406, at page 413, these words occur:

> "Nor do we mean to say that, in granting lands bordering on a non-navigable lake or stream, the authorities might not formerly, by express words, have limited the granted premises to the water's edge, and reserved the right to survey and grant out the lake or river bottom to other parties. But *since the grant to the respective states of all swamp and overflowed lands therein, this cannot be done.*"

In other words, the government officials were without authority in the case at bar to make any express exception of the sunk lands or non-navigable rivers or lakes within the township patented in 1858. If the government was without authority by *express exception* to exclude these sunk lands and non-navigable rivers or lakes because they were included in the grant, no exception of such nature could pos-

sibly be *implied.* The same idea was evidently in the mind of this court when in deciding the case of *Kean* v. *Calumet Company* (190 U. S. 452, at page 459), it said:

> "The case is stronger if the land passed under the swamp land act, as has been held by the State Court with regard to this and similar patents."

THE STATEMENT OF AREA IN THE APPROVED LIST AND PATENT IS IMMATERIAL.

> "A recital in a conveyance of land that the tract contains a certain number of acres, unless there is an express covenant as to quantity, will always be regarded as a part of the description merely, and if inconsistent with the calls of the deed, will be rejected as surplusage."
>
> Warville on Abstracts, Section 207.

The case of *Bishop* v. *Morgan,* 82 Ill. 352, concerned the correct construction of a will by which there was bequeathed to Bishop "the Southeast Quarter of Section Number Ten * * * containing forty acres, more or less." In fact, said southeast quarter contained 160 acres. The court held:

> "We know of no adjudicated case or elementary rule by which the use of the words 'containing forty acres, more or less,' can be allowed to affect or modify descriptions such as 'the southeast quarter of said section' which is clear and certain as to location and boundaries. Quantity in the description of land is never allowed to control courses, distances, monuments or natural landmarks such as creeks, rivers, ponds or lakes."

This case is particularly applicable because, as

in the case at bar, no question of contract was involved directly or indirectly. The proportionate discrepancy between the actual area and the stated area was very much greater than in the present case.

The case of *Ufford* v. *Wilkins,* 33 Iowa 110, is a case where a tract containing forty-four acres was described in a conveyance as "being forty acres." The court said:

> "The rule is that when the quantity of land is mentioned in a deed as part of the description it will be rejected if it be inconsistent with the actual area of the premises as ascertained by known monuments or other certain description, where the tract is definitely described and limited, as in this instance, according to the original survey so that any surveyor can ascertain its contents and if within the boundaries according to the description there be less or more than the supposed quantity of land, the grantee takes all included within the description."

In the case of *Fuller* v. *Carr,* 33 N. J. Law 157, it is said:

> "If the premises are indicated by known and definite boundaries the quantity is of no importance; but if not, it may help to ascertain them."

In the very late case of *Veve* v. *Sanchez,* 226 U. S. 234, 240, this court, in commenting on a contention that the land was not covered by a mortgage because it lay beyond the quantity stated in the mortgage, said:

> "This makes the construction of the mortgage depend—not upon its language, but upon the quantity of land the mortgagor owned at

the date of its execution, and required the jury to make designation by *cuerdas* prevail over description by specific boundaries. This is contrary to the rule that calls for quantity must yield to the more certain and locative lines of the adjoining owners. Such lines are certain, or they can be made certain, and may be platted so as to show the exact course and distance. They are treated as a sort of natural monument and must prevail over the more general and less distinctive designation by quantity."

In *Powell* v. *Clark*, 5 Mass. 355, it is said:

"In a conveyance of land by deed in which the land is certainly bounded it is very immaterial whether any or what quantity is expressed for the description of the boundary is conclusive."

See also:

3 Washburn on Real Property (6th Ed.), Sec. 2322, page 386.

2 Devlin on Deeds, Sec. 1044.

Bowles v. *Craig*, 8 Cranch. 371.

Spreckels v. *Brown*, 212 U. S. 208.

Hyde v. *Phillips* (Wash.), 112 Pac. 257.

Wright v. *Wright*, 34 Ala. 194.

Dalton v. *Rust*, 22 Tex. 133.

Hall v. *Mayhew*, 15 Md. 551.

Pierce v. *Faunce*, 37 Me. 63.

Reddick v. *Leggat*, 7 N. C. (3 Murph.) 539.

Hunter v. *Morse*, 49 Tex. 219.

Jackson v. *Barringer*, 15 Johns. 471.

Kruse v. *Scripps*, 11 Ill. 98.

Petts v. *Gaw*, 15 Pa. St. 218.

Doe v. *Porter*, 3 Ark. 60.

Towel v. *Etter*, 69 Ark. 34.

It has been repeatedly decided by this and other courts, that inasmuch as the areas shown on plats of surveys made before the Swamp Land Acts were passed, were made primarily for the purpose of ascertaining the quantity of upland for which a purchaser from the government should pay, they had no effect in restricting patents under either the Swamp Land Act of 1849 applying to Louisiana alone, or the Swamp Land Act of 1850, which is concerned in this case.

Kean v. *Calumet*, 190 U. S. 452.

McDade v. *Bossier Levee Board*, 109 La. 626.

Tolleston Gun Club v. *State*, 141 Indiana 197; 38 N. E. Rep. 214.

Kean v. *Roby*, 145 Indiana 221.

The case of *McDade* v. *Bossier Levee Board*, 109 La. 626 (33 So. Rep. 628), applies exactly to this case except for the immaterial fact that the approved list there concerned was of sections and not of townships.

The suit was one for damages by McDade, the owner of lands lying above the meander line of "Red Shoot Lake," against the Levee Board for slandering his title to lands within said "lake."

"Red Shoot Lake," as it existed in 1849 and 1850, the dates of the two swamp land acts that affect Louisiana (9 Statutes at Large 352 and 519), was a shallow unnavigable lake about seven miles in length, with an extreme width of about a mile. It appears that it did not cover any single section entirely, but covered the corners of some and passed through the middle of others:

> "The sections are all laid off as regular sections except that the space occupied by the lake is left blank * * * not traversed by any lines." (p. 629.)

McDade's predecessors in title bought the lands outside the meander line from the state. Subsequently the state granted all its lands in the region concerned to the Levee Board, and the building of levees had the effect of reclaiming the land in the lake.

The Court held:

First. That the bed of this lake passed from the government to the state under the approval of the state selections of whole sections.

Second. That the lands purchased by McDade's predecessors in title, from the state, which lands were purchased by the acre, carried no rights outside the acreage purchased.

Third. That the grant to the Levee Board vested title in it to the bed of the lake.

The court says (p. 630):

> "It is true the section lines were not run across the traverse of the lake, and the exact acreage was not ascertained; but the corners of the sections were established, and the lake was shown to be enclaved by lands of a swamp and overflowed character, and the section lines were run to the margin of the lake. This identified the lands and determined their swamp and overflowed character, and nothing more was required for the purposes of the acts of 1849 and 1850.
>
> For the purposes of those acts the exact area did not need to be ascertained, since the grant comprised the whole of the swamp and over-

> flowed lands within the borders of the state, regardless of area."

The court then held that the survey was made in 1836, before the passage of the Swamp Land Acts, and that the areas ascertained were those of dry land, for the purpose of future sales, and therefore the wet land was left out of the computation of acreage, but that the survey

> "was, nevertheless, just as efficacious for the purpose of identifying the lands and determining the question of their wetness or dryness and of serving as a basis for the selection of the swamp and overflowed lands in the township as if made specially for the purpose of such selection." (p. 631.)

The court further said:

> "Ascertainment of acreage is indispensable in the case of land to be thereafter disposed of by the acre, but it is utterly unnecessary in the case of land to be disposed of by selection and approval under swamp land grants of 1849 and 1850. All that is necessary in carrying out those grants is that the lands be identified and their swamp character determined. The whole of the swamp lands, regardless of area, having been granted, the area can cut no figure in the matter of the selection and approval under the grant. Whether the area in the selection list be of one acre or of a million acres can make absolutely no difference. In fact, the selection list might leave out altogether the specification of area and no harm be done."

The court then considers the contention that the Land Department of the government had held that the beds of non-navigable lakes did not pass under the Swamp and Overflowed Land Act, and it comes to the conclusion that the Land Department has not so

held, but that if it did so hold it would be mistaken, saying (p. 633):

> "Are we to hold that the very water-covered lands that were to become dry as the direct, necessary and inevitable result of the building of the levees in aid of which the grants were made, were not land within the purview of the grants? Why, we should be going against the plain intent of the acts.
>
> "If Congress had intended that swamp lands alone should pass, why add the word 'overflowed'? The word 'swamp,' without the addition of the word 'overflowed,' would have conveyed all lands so lacking in drainage as to be temporarily covered by water in rainy seasons. If such lands alone were intended to be conveyed, why add the word 'overflowed'? Has the word 'overflowed' any other meaning than 'water-covered'? Water-covered areas are not to be taken out of the operation of the grant by so simple a process as calling them lakes. The land in controversy was not a lake, except in the sense in which the permanently water-covered parts of all swamps are lakes. Hunters walked all over it in the dry season. In some parts it was a mere slough."

For fear of wearying the court, we abstain from further quotations from this case, but the entire opinion down to the bottom of page (or column) 635 is very illuminative, and it seems to us an entirely correct exposition of the effect of the Swamp Land Acts and selections thereunder upon the title to lands meandered out by United States surveys made prior to the passage of either of said acts. The remainder of the opinion and the opinion on rehearing are devoted to details of the case not in any way bearing upon the present suit.

In *Stoner* v. *Rice*, 121 Ind. 51, cited with approval

in the opinion in *Kean* v. *Calumet*, it was held that where a shallow lake or pond appeared to be situated within the limits of Government subdivisions, although meandered on the Government plat, it passed to the patentees of the subdivisions, because included within their limits.

See also:

People v. *Warner*, 116 Mich. 228.

The case of *Tolleston Gun Club* v. *State*, 141 Indiana 197, 38 N. E. Rep. 214, is in point. On the question of construction of the government patent we can see no distinction between this case and the case at bar, unless, indeed, it should be held, as seems to us hardly possible, that a patent of a township is as regards lands included within its borders to be construed differently from the patent of a section. It appears that in this case both the selection under the Swamp Land Act and the patent covered a number of whole sections. The acreage stated was very much less than the entire acreage of both wet and dry lands in the sections. For instance, the selection and patent covered "all of 21 and 22," which was stated to have an acreage of 588.85 acres, whereas, including the overflowed lands in the sections, they appear from the case to have been full sized sections with a combined acreage of 1,280 acres.

It appears that the lands in dispute consisted of a tract about six miles in length and from three-fourths of a mile to a mile and a quarter in width on each side of the Little Calumet River; that the original field notes called for a "lake," while on the plat it was marked "impassable marsh." It

will be seen that there is an exact correspondence between these lands and the lands in dispute in the case at bar. The court found that all the section corners were marked, as the court has found in this case, that the township corners and the outer boundaries of the township were established. The court notes that the sections were all numbered regularly, as is the case with Township 12 North, Range 7 East:

> "A part of each section lies without and a part within the meander line. The sections are therefore as completely defined by corners, section lines and numbers as any other sections of a United States survey. The whole territory in dispute, including the river itself, is covered by these sections. No land or water is left unsurveyed. All that is peculiar to the survey is that parts of the sections are without and parts within the meander lines; the parts without the meanders being subdivided into lots, while the parts within are not marked as subdivided. In the list certified from the general land office, as we have seen, the sections in question are described as 'All of 12, 15, 17, 18, 19, 20, 21, 22 and N. W. ¼ 23.' There can be no doubt of the meaning of this description. It covers all of the sections named, both within and without the meander lines." (p. 206.)

In regard to the question of acreage which was raised by counsel, the court says (italics are ours):

> "These red entries are evidently office figures, and were undoubtedly placed in the list to indicate the acres of dry land in the several sections, being the land outside the meander lines. They do not, however, properly speaking, constitute any part of the description of the sections. They simply indicate the dry land, *and were of use to the officials and to the pur-*

> *chasers of the land in determining the price that should be paid for it.* As frequently decided, meander lines are not boundary lines, unless expressly made so in the instrument of conveyance. The full title of the grantor to the whole section or other division named, both within and without the meander line, the wet land as well as the dry, passes with the deed." (p. 207.)

The above quotations are from that part of the opinion of the court considering the effect of the act of March 3, 1857, as confirming the title to lands selected by the state. It appears that the patent to these lands was a patent for fractional sections, the areas stated being apparently the same as that in the approved list. In this regard the court further says:

> "The term 'fractional,' as applied to the sections named in the patent, refers simply to the circumstance that they do not contain 640 acres each of dry land. As we have seen, however, the sections were fully surveyed; the corners and boundary lines were determined and recorded in each instance. It follows, from what we have already said, and from the authorities above cited, that the conveyance of the fractional sections carried title to the extreme boundary lines of the sections. All was conveyed. There remained to the United States neither upland nor lowland, whether exposed to the surface or covered by the waters of the marsh or the river. The state took to the section lines." (p. 208.)

The later case of *Kean* v. *Roby,* 145 Indiana 221, 42 N. E. Rep. 1011, involved as did the Tolleston Gun Club case, a dispute between the state or the state's grantees and claimants under patents from

the United States based upon a resurvey of lands meandered out in the first survey. The facts were, as to some of the lands, that one of the section corners and portions of the boundaries of the section were not actually run out on the ground because water was encountered. The west boundary of said section (12) coincided with the said line which, however, does not appear to have been actually run over the waters of the so-called Wolf Lake, and the south line of said Section 12, was only run out in part. The Court quotes from Section 2396 of the United States Revised Statutes as answering any argument based upon these facts as follows:

> "The boundary lines which have been actually run and marked shall be ascertained by running said lines from the established corner to the opposite corresponding corners, but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners to the north and south or east and west lines, as the case may be, to the water course, or other external boundary of such fractional township." (p. 227.)

This case and the preceding one were cited with approval in *Kean* v. *Calumet*, 190 U. S., at page 459. It is to be noted that the theory of these Indiana cases supported by the opinion of this Court in the Kean case is based not upon any question of riparian rights whether or not such might have been the basis of the decisions, but wholly upon the proposition that the patent under the Swamp Land Act of a whole section or a whole "fractional" section conveyed to the state everything within the

external limits of the section and that it was not necessary that every foot of the external limits should have been actually run out on the ground, but that where "lake" or "impassable swamp" interfered with the actual running out of a portion of the line, such interference would be disregarded where the whole survey sufficiently identified the land covered. This conclusion is further emphasized by the opinion in *Kean* v. *Calumet* where it is said (page 460):

> "It is said that the land under water was not embraced in the survey of 1834. It would seem from the plat and the field notes that the sections and dividing lines were clearly marked off and posts set. The case is similar to *Kean* v. *Roby*, 145 Indiana 221, where the survey was pronounced sufficient. No difficulty was felt on the ground that the survey did not cover the submerged land in *Hardin* v. *Jordan*, 140 U. S. 371. But furthermore, the land was selected as 'swamp and overflowed lands' by the State. It not appearing otherwise, the selection must be presumed to have included the land overflowed, and if so it was confirmed to the state by the Act of March 3, 1857, c. 117, 11 Stat. L. 251, Rev. Stat., Sec. 2484. The confirmation encounters none of the difficulties of cases like *Stoneroad* v. *Stoneroad*, 158 U. S. 240. The land surrounding the water, at least, was surveyed so that the identification of the submerged portion was absolute. We are of opinion that the State of Indiana got a title to the whole land in dispute."

Meander Lines.

The cases of *McDade* v. *Bossier Levee Board*, *Tolleston Gun Club* v. *State*, *Kean* v. *Robey*, and *Kean* v. *Calumet Co.*, cited at some length above

all support the rule that meander lines in government surveys and plats are principally intended not as boundary lines, but to assist in fixing the acreage of uplands for which a purchaser was expected to pay.

Meander lines were "run for the purpose of ascertaining the exact quantity of the upland to be charged for." (*Hardin* v. *Jordan*, 140 U. S. 371, 380.) Especially must this have been true in regard to surveys made while the policy of the government was still to sell off its public lands at a fixed price per acre, as was the case when the subdivisional surveys of Township 12 North, Range 7 East were made, but the surveyors in fact used meander lines not only to mark out bodies of water, either navigable or not, but also in some cases to mark out government reservations, Indian reservations or swamp (See *Niles* v. *Cedar Point Club*, 175 U. S. 300), and in this case to mark out "sunk lands."

While in general therefore meander lines are not boundary lines, yet where lands are sold by the acre and an outside meander line taken with the other boundaries of the tract conveyed in fact encloses the acreage bought, paid for, and intended to be conveyed and, as found to be the fact in this case (Printed Transcript p. 212), the meander line does not mark the shore of a permanent body of water, in such cases the courts have held the meander line to be part of the boundary, and the acreage sold and recited to be material.

Security Land Co. v. *Burns*, 193 U. S. 167.
French-Glenn Live Stock Co. v. *Springer*, 185 U. S. 47.

Niles v. *Cedar Point Club*, 175 U. S. 300.
Horn v. *Smith*, 159 U. S. 40.

See also

Western Hawaiian, Etc., Co. v. *National Bank*, 35 Ore. 298, 57 Pac. Rep. 912.

We have yet to see, however, a decision of this court or any other court to the effect that a plat showing lands meandered out within the external limits of the land actually described operates to exclude the lands so meandered from a grant. It would seem that such a conclusion would be impossible in any event. It is certainly impossible where the very terms of the transaction make the question of the area absolutely immaterial and when therefore the recital of acreage is not merely surplusage as in an ordinary deed with a clear description but is a statement of a fact having not the remotest bearing on the transaction, and can be explained only on the basis that the employes of the land office being accustomed to drawing patents for *purchasers* from the government where the acreage was of importance in fixing the purchase price, followed this custom blindly.

This distinction which we think exists between the effect of meander lines and a statement of acreage in a patent where the right is grounded upon the character of the land and one where the right is grounded on a purchase at an acre price, is clearly recognized in the case of *McDade* v. *Bossier Levee District*, 109 La. 626, at page 635, where it is said:

> "In the next place, there exists between the selection and approval in question, and the con-

veyance by the state to plaintiff's authors, this radical difference: That the one was nothing more than an act declaratory of the character of certain lands, whereas the other was a sale at so much per acre. In the one, acreage cut no figure; in the other, it was the all-important point. A survey made to serve as a basis for the one would have for its sole purpose the identifying of the land and the fixing of its character. On the other hand, a survey made to serve as basis for the other would have for its purpose the ascertainment of the acreage."

II.

PLAINTIFFS IN ERROR HAVE SHOWN NO TITLE IN THEMSELVES TO THE LAND IN QUESTION.

As noted above, the defense of plaintiffs in error to the claim of the Levee District is, first, title in themselves; second, title in the United States.

The claim of title in plaintiffs in error is based by them upon alleged riparian rights accruing to them as owners of the land outside the meander line. This claim necessarily involves construction of the state patents granted in 1871 to their predecessors in title, and on this question, essentially one of state law, it would seem that the decision of the Arkansas Supreme Court is final.

Moreover, the Arkansas courts have found as a fact that the "sunk lands" were in 1850 *lands* and not *water*. It is elementary that riparian rights exist, in any case, only over the bed of bodies of water. No such rights arise from ownership of land abutting on marsh or its equivalent "sunk land."

Niles v. *Cedar Point Club*, 175 U. S. 300, 308.

West Hawaiian Co. v. *Farmers' and Traders' National Bank*, 35 Ore. 298; 57 Pac. 912.

Decree of Arkansas Supreme Court in this case, see Printed Transcript, p. 223.

As bearing upon the sense in which the term "sunk lands" was used by the United States surveyors it is material to note that in the government survey of Township 13 North, Range 7 East, whose south line is the north line of the township in question, the terms "sunk lands" and "swamp and overflow" were apparently used as equivalents, and that in the plats, both of Township 13 North, 7 East and of Township 13 North, 8 East, the surveyors repeatedly noted "sunk lands" on sectionized areas without meandering such sunk lands (see plats of all three townships at the end of the Printed Transcript).

However, even if the notation "sunk lands" were to be taken as proving the existence of a permanent body of water in 1850, this would only result in an additional reason why title to the sunk lands passed to the State of Arkansas under its approved list and patents.

See *Hardin* v. *Jordan*, 140 U. S. 371.
Mitchell v. *Smale*, 140 U. S. 406.
Kean v. *Calumet*, 190 U. S. 452.

As noted above, if title passed to the state by virtue of the approved lists or patent the question of what became of the title afterwards is necessarily one of local law.

III.

THE COMPROMISE AGREEMENT BETWEEN THE UNITED STATES AND THE STATE OF ARKANSAS MADE IN 1898 DOES NOT AFFECT THE LAND IN QUESTION.

As pointed out above, the land having been both included within a state selection and a government patent falls within the express exception of the compromise agreement. (See Appendix, p. 38.)

Act of Congress of April 29, 1898 (30 Statutes at Large, 367).

The Swamp and Overflowed Land Act of September 28, 1850, was a grant in *praesenti* and passed equitable title to the state. This title the state conveyed to the Levee District. The Levee District having at least equitable title and there being nothing further to be done by the government even on the supposition that the legal title had not passed to the state and so to the district, except the ministerial duty of issuing a patent, the Levee Disrict was entitled to assert its ownership as against all third persons.

Wright v. *Roseberry*, 121 U. S. 488.

Tubbs v. *Wilhoit*, 138 U. S. 134.

Iowa, etc., Land Co. v. *Blumer*, 206 U. S 482.

This court has indeed held in *Michigan Land & Lumber Company* v. *Rust*, 168 U. S. 589, that even in spite of the confirmatory act of March 3, 1857, where a patent had not issued to lands claimed under the Swamp and Overflowed Land Act the secretary of the interior might investigate the character of the lands to see whether they were swamp and

overflowed lands, or lands fit for agriculture at the date of the grant, but even in this case the fact that equitable title passed under the act if the lands were in fact swamped and overflowed, and that the only question that could be raised was as to the character of the land was clearly recognized. (See page 593.)

It seems moreover that the theory of this case is clearly inapplicable to a situation where the selection list approved by the secretary prior to the act of March 3, 1857, showed selections by whole sections or townships, for it is said in *Kean* v. *Calumet*, 190 U. S. 452, 460:

> "But furthermore, the land was selected as swamp and overflowed lands by the state. It not appearing otherwise the selection must be presumed to have included the land overflowed, and if so, it was confirmed to the state by the act of March 3, 1857. * * * The land surrounding the water at least was surveyed so that identification of the submerged portion was absolute." (Page 460.)

It seems safe from the authorities cited above to assume that when the legislature of Arkansas passed the Act granting State lands to the Levee District, even if it could be conceded that full legal title did not pass, at least the equitable title passed.

The language of the state legislature is:

> "That for the purpose of assisting the citizens of the state to build and maintain a levee along the St. Francis front in this state, and in consideration of the general good of the state; that all the lands of this state lying within said levee district except the sixteenth section school lands, and all the right or interest the state has or may have within the next five years, by reason of forfeiture for taxes or to any lands within said levee district except said

sixteenth section school lands, is hereby conveyed to said levee district under the following restrictions and limitations." (Acts of Ark. 1893, p. 172.)

The restrictions and limitations referred to, so far as material, are contained in the following language:

"The said levee district may sell said lands for the minimum prices of $2.50, $1.50 and 50 cents per acre as to grade, or may issue the bonds of said levee district secured by a mortgage on said lands or any part thereof, and payable as the board of directors may determine; and the treasurer of the levee board of said district, upon the receipt of payment of any part or parcel of said lands, shall certify the same to the president of said board, who shall execute a deed in the name of said corporation to the purchaser of said lands, the money arising from such sales or issuance of bonds to be applied solely to the construction and maintainance (maintenance) of the levee of said levee district.

Sec. 2. That said lands shall be exempt from state and county taxes for five years, if not sooner sold by said district, and at the expiration of the term of five years from the passage of this act, all of the said lands not previously sold by said district, shall be assessed in the name of said district for said state and county taxes."

This grant to the Levee Board was one that could not be revoked or called back by the State Legislature. It is to be observed that it was a grant in fact for the benefit of the residents of the particular district; that it did not have to do with the exercise of general governmental powers, and that the provision quoted above as to taxation makes it evi-

dent that in the mind of the legislature the Levee District was to hold the land as a property holder and not in trust for the state, for the state would hardly levy a state tax on its own property. This is further proven by the fact that the Levee Board is given power to mortgage this land, a power that would be absolutely nugatory if the state had the right to revoke the grant in whole or in part.

Cases are not wanting where similar grants have been held irrevocable even by express action of the state legislature.

The case of *Grogan* v. *City of San Francisco*, 18 Cal. 590, is very much in point. The holding of that case on this question is well stated in the syllabus, as follows:

> "There is no difference in the inviolability of a contract, between a grant of property to an individual and a like grant to a municipal corporation. So far as municipal corporations are invested with subordinate legislative powers for local purposes, they are mere instrumentalities of the State for the convenient administration of the government, and their powers are under the entire control of the legislature; they may be qualified, enlarged, restricted or withdrawn at its discretion. But when they are empowered to take and hold private property for municipal uses, such property is invested with the security of other private rights."

So in *Franklin County Grammar School* v. *Bailey*, 62 Vermont 467 (10 L. R. A. 405), it was held that a legislative grant of premises to the grammar school, apparently a *quasi* municipal corporation, vested a title which the legislature was without constitutional power to take away.

And in *Proprietors of Mount Hope Cemetery* v. *City of Boston,* 158 Mass. 509 (33 N. E. Rep. 695), it was held that Mount Hope Cemetery could not be taken away from the City of Boston by the legislature but that its ownership was protected under the constitution of Massachusetts and of the United States so that the legislature had no power to require its transfer without compensation.

See also:

Jackson v. *Dilworth,* 39 Miss. 772.

Higginson v. *Slattery,* 212 Mass. 583 (99 N. E. Rep. 523, 525).

Webb v. *N. Y.,* 64 How. Pr. 10.

Dillon on Municipal Corporations, 3d Ed., p. 91.

And in *Board of Education* v. *Blodgett,* 155 Ill. 441, 450, it is said:

> "The political rights and privileges delegated to counties, school districts and cities, are not, within the constitutional provisions, against laws which impair vested rights, but their property rights are protected by the same constitutional guarantees which shield the property of individuals from legislative aggression."

It would seem that this rule that the property rights of municipal corporations cannot be taken away by legislative action, without compensation, would apply more particularly to *quasi* municipal corporations such as drainage districts, school districts and levee districts whose property is held, from the very nature of things, primarily for the benefit of the inhabitants of the district. Especially must this be the case where it is contemplated that the district should expend money and incur financial obligations on the faith of the grant made.

On this question the Supreme Court of Arkansas, in its decision in the present case, says:

> "This grant to the Levee Board having been made prior to the state settlement with the government and relinquishment of its right to all the remaining swamp lands to which it may have had claim under the Swamp Land Grant, was not affected by such settlement."

There is another point in this connection, and that is, that even if the State of Arkansas had power to revoke this grant, any exercise of that power should be unequivocal. There is nothing in the agreement of compromise which shows any attempt by the legislature to revoke this grant. The Arkansas legislature, by its joint resolution passed March 10, 1897 (Laws of Ark., 1897, p. 88) in authorizing a change in the compromise agreement, not here material, interpreted that agreement as an obligation on the part of the State of Arkansas *"to release and quitclaim to the United States all claims adjusted or unadjusted."* Moreover, Congress in adopting the compromise expressly provided that the title of all persons who had purchased from the State of Arkansas and held deeds, was confirmed and made valid as against any claim or right of the United States. (See Sec. 3 Act of April 29, 1898—30 Statutes at Large, 367.)

We do not claim that the title to the district falls literally within the provisions of this section but it does fall within its intent and it is further evidence to show that it was the intent of neither party to the compromise that it should operate to revoke titles granted by the State of Arkansas. Moreover, the only reason why the district did not have a deed was

because the grant from the state took the place of a deed. As noted above, the district had, in fact, paid its consideration for the grant by completing the St. Francis Levee in 1897.

CONCERNING THE SUGGESTIONS FILED BY THE SOLICITOR GENERAL ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE.

The suggestion of the solicitor general calls the attention of the court to the fact that the land involved in this suit is a small part of a much larger acreage similarly or somewhat similarly situated.

The solicitor general is, we believe, mistaken in his statement that the record in the present case is silent as to the existence of the government's claim (unless he intends to say that the record in this case is silent as to the fact that the government is asserting a claim to some or all of these sunk lands), for the assignments of error are grounded in part upon the suggestion that the government may have title.

It is further to be noted that the decision of First Assistant Secretary Pierce in the Arkansas Sunk Lands case, 37 L. D. 342 and 462, mentioned by the solicitor general, is contrary to two former opinions of the department; one written by Secretary Hoke Smith in August, 1894, the other written by Secretary Hitchcock November 17, 1892; also that the decision of First Assistant Secretary Pierce is based principally on the decision of the Arkansas Supreme Court in the case of *Little* v. *Williams*, 88 Ark., 37, now pending in this court on writ of error and expressly distinguished by the Arkansas Supreme

Court in its opinion in the present case. It further appears that Secretary Pierce did not consider the question whether the selection and patenting by whole townships did not include all the lands within the limits of the townships, which is the ground for the decision by the Supreme Court of Arkansas in the case at bar. It is further to be noted that nowhere in the departmental opinions is there any finding that the lands were not swamp or overflowed. In fact, it is stated that they were such. (37 L. D. 348.)

It seems evident to us that if the Supreme Court of Arkansas is right in its holding that a patent of a whole township includes all the land within the township, or if the conclusion that the selection of the whole township, approved by the secretary and confirmed by the Act of March 3, 1857, operates to vest title in the entire township, then it is a matter of importance to every one concerned that this court should put at rest any doubt as to the meaning of such patent. Obviously, if homesteaders are going on these lands, as suggested, under a false impression, it is of importance that the proper interpretation of the state's original title should be fixed in order that innocent persons may be guarded against a waste of their time and labor.

As early as the case of *Irvine* v. *Marshall*, 20 Howard 558, 567, this court said of the rulings of the Land Department:

> "But supposing these to be in accordance with the above suggestion they could by no means control the action or opinion of this court in expounding the law with reference to the rights of parties litigant before them; and

> this they must do in accordance with their own convictions uninfluenced by the opinion of any and every other department of the Government."

This court has been obliged repeatedly in guarding the rights of owners of real estate under early patents from the government to overrule the Land Department, when it has misconstrued government surveys and patents and has acted on the assumption that a meander line was intended primarily as a boundary line. The cases of *Hardin* v. *Jordan*, 140 U. S. 371; *Mitchell* v. *Smale*, 140 U. S. 406, and *Kean* v. *Calumet Company*, 190 U. S. 452 mentioned above, are striking examples. In all three cases the department not only ruled that lands lying within a meander line did not pass under patents to the legal subdivisions including them, but proceeded to make additional surveys of such land, sold it and issued patents therefor. Nevertheless this court did not hesitate to hold that these patents were void, and thereby necessarily held that the department had by the earlier patents lost jurisdiction of the land in controversy.

CONCLUSION.

Counsel for plaintiffs in error state that the "whole township" theory is against numerous decisions of this court and against the rules of the Land Department and the entire system for the survey and disposition of public lands. Counsel cite in support of this contention two decisions of this court, *Cragin* v. *Powell*, 128 U. S. 691, and *Gazzam* v. *Phillips*, 20 Howard 372, two decisions of First Assistant Secretary Pierce of the Interior Department, 37 L. D. 345 and 462, and *Little* v. *Williams*, 88 Ark. 37.

As to these authorities it may, we think, be fairly said that the two cases cited from this court have no application whatever; that the Arkansas decision was held by the same court that rendered it not to apply to the present case; and that the decisions in the Interior Department are contrary to the judicial decisions both of this and other courts. These Department decisions proceed on the false assumption that the township lines were not ascertained and on the irrational theory that a patent under the Swamp and Overflowed Land Act could only cover lands subdivisionally surveyed. It may further be remarked that later on in their brief (p. 22) counsel severely criticise these Land Department Decisions. Counsel admit (p. 21) that the case of *McDade* v. *Levee District*, 109 La., page 626, and *People* v. *Warner*, 116 Mich. 228, are authorities in favor of what they

term the "whole township" theory." They should certainly have added *Kean* v. *Calumet, Tolleston Gun Club* v. *State,* and *Kean* v. *Robey,* all discussed above, and the decision of the Arkansas Supreme Court in the present case.

Counsel endeavor throughout their brief to make it appear that our case depends upon an attack on the United States Government surveys. We confess ourselves totally unable to see how a claim that a patent to a whole township means what it says is an attack upon the survey. For our case rests on the idea that a patent to a township conveys the entire township and not merely portions thereof, that it does not leave in the United States the legal title to various irregularly shaped strips of land zigzagging through the township or nipping its edges, merely because the surveyors found it difficult to extend all their lines across morasses.

The proposition that full title to the area in question passed to the State of Arkansas under the selection, the approval thereof, and the patent from the United States, and the proposition that the compromise agreement of 1898 between the United States and the State of Arkansas had no bearing on these lands because the state's title had already been conveyed to the District and for the further reason that the State did not surrender any lands already patented or confirmed to it, both of which propositions we respectfully submit we have above established, together constitute the basis for the decision of the Supreme Court of Arkansas, to reverse which this writ of error is pending. This decision is set out fully in the printed transcript at pages 222

to 224. Counsel for plaintiffs in error earnestly contended that this decision is inconsistent with the former decision of the same court in the case of *Little* v. *Wililams,* 88 Ark. 37. That court had no difficulty in distinguishing the two cases.

This distinction rests on two grounds:

First, the stipulated facts in the Williams case showed the selection, approval and patent only of so-called "surveyed" lands, that is, sectionized lands lying above the meander line, while in the present case the proof shows a patent of the entire township whose boundaries clearly surround the land in question.

Second, the *locus in quo* in the Williams case was shown as *water* on the plat, while in this case it appears as ***land.***

As the present controversy is in no way concerned with obligations undertaken since or rights arising upon the faith of the earlier decision, it seems obvious that the extent of the application of that decision is a question of state law.

So far as the law of Arkansas is in point we submit that the decision of its Supreme Court in the case at bar must be taken as the authoritative expression of that law.

We ask that the decision of the Supreme Court of Arkansas in the case at bar be affirmed.

Respectfully submitted,

SAMUEL ADAMS,
H. F. ROLESON,
J. C. HAWTHORNE,
N. F. LAMB,
Attorneys for Defendant in Error.

APPENDIX.

EXTRACTS FROM COMPROMISE AGREEMENT EFFECTIVE, WITH CERTAIN CHANGES, UNDER ACT OF APRIL 28, 1898.

"CITY OF WASHINGTON, DISTRICT OF COLUMBIA. } ss.

This indenture, made this 23d day of February, 1895, between John G. Carlisle, Secretary of the Treasury, and Hoke Smith, Secretary of the Interior, under the power and authority conferred by an act of Congress approved August 4, 1894, entitled "An act to authorize a compromise and settlement with the State of Arkansas," parties of the first part, and James P. Clarke, governor of the State of Arkansas, acting under the powers conferred by the general assembly of the State of Arkansas, approved April 8, 1880, party of the second part, witnesseth:

* * * * * * * *

3. As a further consideration for the surrender of the aforesaid bonds, coupons, etc., the party of the second part hereby relinquishes and quitclaims to the United States all claims or demands, adjusted or unadjusted, growing out of the act of September 28, 1850, known as the swamp-land act; also, all land or cash indemnity growing out of the acts of March 2, 1855, and March 3, 1857; also, all claims for indemnity school lands; the residue of salt-spring lands; the residue of the lands under the

courthouse and jail grant (Act June 15, 1832); the residue of lands under act of September 4, 1841, for internal improvements; the residue of the grant under the acts of March 2, 1831, and June 3, 1836, for public buildings, and all other claims or demands of whatever nature or character.

The parties hereto agree that the land now patented, approved, or confirmed, to the State of Arkansas under the acts of September 28, 1850, March 2, 1855, and March 3, 1857, shall constitute the full measure due the state under the said swamp-land acts, except, however, that the lands described in the following lists shall be patented to the state, namely: List No. 1, containing 12,640 acres, denominated "approved, but not listed;" and List No. 2, containing 4,960 acres, denominated "Confirmed, but not listed;" which lists were transmitted to the Secretary of the Interior on November 17, 1894, by Letter "M" of the Commissioner of the General Land Office.

* * * * * * * *

Nothing in this settlement and agreement is intended to or shall in any connection be held to prejudice the rights of the State of Arkansas to assert and establish her title to any lands which were granted or confirmed to her by the said acts approved September 28, 1850, March 2, 1855, and March 3, 1857, in so far as the same is disputed by those claiming under any subsequent grant made or claimed to have been made, the scope and purpose of this settlement being hereby declared to be the adjustment of all disputes between the United States and the State of Arkansas, and to leave undisturbed incidental con-

troversies between said state and other parties in which the United States is not beneficially interested.

* * * * * * * *

In testimony whereof we have hereunto subscribed our respective names this the day and year first above written.

J. G. CARLISLE,
Secretary of the Treasury.

HOKE SMITH,
Secretary of the Interior.

JAMES P. CLARK,
Governor of Arkansas."

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Office Supreme Court, U. S.
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JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1913.

CHAPMAN AND DEWEY LUMBER COMPANY AND CHAPMAN AND DEWEY LAND COMPANY, *Plaintiffs in Error,*

vs.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, *Defendant in Error.*

No. 82.

ADDITIONAL BRIEF FOR DEFENDANT IN ERROR.

H. F. ROLESON,
SAMUEL ADAMS,
Attorneys for Defendant in Error.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

Supreme Court of the United States

October Term, 1913.

CHAPMAN AND DEWEY LUMBER COMPANY AND CHAPMAN AND DEWEY LAND COMPANY, *Plaintiffs in Error*,

vs.

BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, *Defendant in Error*.

No. 82.

ADDITIONAL BRIEF FOR DEFENDANT IN ERROR.

In view of what the court has said in the case of Little vs. Williams, decided at the present term, regarding the relationship of the State of Arkansas and the Board of Directors of the St. Francis Levee District, and the effect of the Arkansas Compromise Act of 1897, we think proper to call the court's attention to certain other acts of the Legislature of the State of Arkansas and some decisions of the Supreme Court of that State.

In Little vs. Williams, this court uses the following language concerning the St. Francis Levee District:

"The district was a mere political subdivision of the State, created by the latter, and invested with authority to construct and maintain levees to protect lands within its limits from overflow by the waters of the Mississippi River, and to levy and collect taxes and take other measures to that end—Laws Ark., 1893, pp. 24, 119. It was essentially a subordinate agency of the State, was exercising a power of the State for its convenience, could have no will contrary to the will of the State, held its property and revenue for public purposes, and was in all respects subject to the State's paramount authority."

The St. Francis Levee District was created by the Act of February 15, 1893, of the Legislature of Arkansas (Acts Ark., 1893, pp. 24 to 36). Section 5 of that Act provides as follows:

"Section 5. That for the purpose of building, repairing and maintaining the levee aforesaid and for carrying into effect the objects and purposes of this Act, the Board of Levee Directors shall have power, and it is hereby made their duty, to assess and levy annually a tax not exceeding five per cent. of the increased value or betterment estimated to accrue from protection given against floods from the Mississippi River by said levee on all lands within said Levee District, *provided, that said Board of Directors shall call a meeting of the land owners in each of the respective counties within said Levee District in each county* by posting notice of the time and place of said several meetings in ten conspicuous places in each county, ten days before the day fixed for the meeting, at which time the proposition to levy said annual assessment shall be submitted to said land owners, *and if a majority of the land owners in such Levee District shall be at said meeting in person, or by their legal proxies, and two-thirds of those shall vote for such assessment,* it shall be the duty of said Board of Directors to levy said tax."

Later at the same session of the Legislature an act was passed, which was approved March 29, 1893, (Acts of 1893, page 172), apparently not noticed by this court in considering the Little case. The first clause of that act is as follows:

> "That, for the purpose of assisting the citizens of the State to build and maintain a levee along the St. Francis front in this State, and in consideration of the general good of the State, that all of the lands in this State lying within the said Levee District, except the 16th Section school lands, and all the right or interest the State has or may have within the next five years, by reason of forfeiture for taxes, or to any lands within said Levee District, except said Section 16 school lands, is hereby conveyed to said Levee District, under the following restrictions and limitations"

Said act also authorized the Board of Directors of the St. Francis Levee District to sell said lands at stated prices, and also authorized the Board to issue bonds of said Levee District, *"secured by mortgage on the said lands,"* or any part thereof, and payable as the Board of Directors may determine.

Section 2 of the Act provides:

> "That said lands shall be exempt from State and county taxes for five years, if not sooner sold by said District, *and at the expiration of the term of five years from the passage of this Act, all the said lands not previously sold by said District shall be assessed in the name of said District for said State and county taxes."*

If, as a matter of law, these lands still belonged to the State, and were subject to disposition by the State, and the grant to the Levee District amounted to nothing more

than a simple placing of the State's lands within the hands of said Board, then the enactment of Section 2 quoted cannot be accounted for. State lands were not subject to assessment or taxation.

The fact that the title to these lands passed absolutely to the Board of Directors of the St. Francis levee District, and that the State had no further right or interest in them, was held by the Supreme Court of Arkansas in the case of *Bonner* vs. *Board of Directors of the St. Francis Levee District*, 77 Ark., page 519, in which case it was determined that the lands were subject to assessment for State and County taxes. In a foot-note to that case, it is said:

> "Appellee (the defeated party), insisted in its brief that the lands were not subject to taxation, being 'public property and exclusively for public purposes,' within Constitution 1874, Article 16, Section 5."

The character of the St. Francis Levee District was discussed and determined by the Supreme Court of Arkansas in the case of *Carson* vs. *The St. Francis Levee District*, 59 Ark., 513. See also *Memphis Trust Company* vs. *Board of Directors*, etc., 69 Ark., 284, holding that the District was not within the Constitutional prohibition against the issuance of bonds by the State, counties or municipalities, *i. e.*, political subdivisions.

If, under the Swamp Land Act of Congress, of September 20, 1850, the State acquired an equitable or inchoate title to these lands, in our view such title passed to the Levee District and was no longer subject to the control or disposition of the State.

There was a valuable consideration for the granting of these lands from the State to the Levee District. It is fair to assume that the land owners of the District, at the meeting provided for under the Act, in determining whether

they would undertake the burden of constructing these levees and tax themselves for such purpose, had in mind the consideration of the grant of these lands from the State.

The Act of 1893, when acted upon by the tax payers, really constituted a contract between them and the State.

The authorities cited on pages 30 to 35, of the principal brief for Defendant in Error further support these views.

Respectfully submitted,

H. F. ROLESON,

SAMUEL ADAMS,

Attorneys for Defendant in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

CHAPMAN & DEWEY LUMBER COMPANY AND Chapman & Dewey Land Company, plaintiffs in error,
v.
THE BOARD OF DIRECTORS ST. FRANCIS Levee District.
No. 82.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

SUGGESTION BY THE UNITED STATES.

The Solicitor General on behalf of the United States as *amicus curiæ* respectfully represents to the court:

The lands involved in this controversy, and other similar areas in the State of Arkansas, generally known as "sunk lands" and sometimes erroneously designated as "lakes," were omitted from the original public land surveys. In the year 1908 the Secretary of the Interior, after hearing persons interested, including the parties to this litigation, decided that the "sunk lands" here involved and other areas of like character, not having been surveyed or specifically disposed of, remained the property of the

United States, and accordingly ordered that they be surveyed and held for disposition under the general land laws. See "Arkansas Sunk Lands," 37 L. D., 345, and same case on review, *ib.*, 462. Homestead rights are being asserted to a large part, if not practically all, of these "sunk lands," and suits have been begun by the United States, and others are in immediate prospect, for the purpose of clearing its title against all adverse claims, including such as are asserted by the respective parties to the case at bar. Approximately 40,000 acres will be embraced in these suits.

The record in the present case being silent as to the existence of the Government's claim, this suggestion of it is made, not as bearing upon the merits of the controversy now presented, but as a matter of possible interest to the court in guarding its opinion.

Respectfully submitted.

JOHN W. DAVIS,
Solicitor General.

OCTOBER, 1913.

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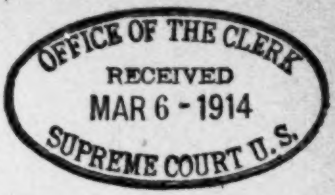

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1913.

No. 82.

CHAPMAN & DEWEY LUMBER COMPANY,
CHAPMAN & DEWEY LAND COMPANY,
Plaintiffs in Error,

vs.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT,
Defendant in Error.

Petition for Rehearing by Defendant in Error.

SAMUEL ADAMS,
H. F. ROLESON,
J. C. HAWTHORNE,
N. F. LAMB,
ATTORNEYS FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1913.

No. 82.

CHAPMAN & DEWEY LUMBER COMPANY,
CHAPMAN & DEWEY LAND COMPANY,
Plaintiffs in Error,

vs.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT,
Defendant in Error.

Petition for Rehearing by Defendant in Error.

Now comes your petitioner, Board of Directors, St. Francis Levee District, defendants in error herein, and respectfully petitions this Honorable Court for a rehearing of the above entitled cause, for the following several reasons, to-wit:

First. The opinion proceeds on the hypothesis unsupported by the record, and we believe false in fact, that the Governor of Arkansas in his request for the patenting of the township in question stated its acreage.

Second. The opinion is essentially based on what we respectfully submit is an unphilosophical and illogical use of the terms—"surveyed land" and "unsurveyed land."

Third. The effect of this decision will be disastrous upon titles throughout the public land states. A new reservation will be read into all Government patents, whatever their dates, of any land mistakenly included within meander lines by the Government surveyors.

Fourth. The opinion *completely ignores* but in effect overrules the previous decisions of this court and of the Supreme Courts of Louisiana, Indiana, Michigan and Arkansas on the point that a patent of a Government subdivision includes all the land within the description.

Kean v. *Calumet Canal Co.*, 190 U. S. 452.
McDade v. *Bossier Levee District*, 109 La. 626.
Kean v. *Robey*, 145 Ind. 221.
Tolleston Gun Club v. *State*, 141 Ind. 197.
Stoner v. *Rice*, 121 Ind. 51.
People v. *Warner*, 116 Mich. 228.
Chapman & Dewey Co. v. *Levee District*, 100 Ark. 94.

Moreover, the opinion is utterly inconsistent with the following decisions of this court, which it also ignores.

Hardin v. *Jordan*, 140 U. S. 371.
Mitchell v. *Smale*, 140 U. S. 406.
Railroad Co. v. *Schurmeier*, 7 Wall. 272.

Statement Unsupported by the Record.

The opinion in the case at bar makes a statement of fact which we respectfully submit is not warranted by the record. The opinion says: "In requesting the listing the state described the town-

ship as containing 14,329.97 acres." The *record does not show the request of the state for the listing.* It shows merely the certificate of the Surveyor General to the effect that the list "is a true and correct transcript from the originals filed in the office of the Surveyor General by the Governor of the State of Arkansas, *with only such modifications as to make the description of the several tracts agree with the plats on file in this office.*" Inasmuch as it does not appear what these modifications are, it certainly cannot properly be inferred that the acreage was stated in the request of the State of Arkansas. In fact, the fair inference is that the "modifications" introduced were the statements of acreage. However this may be, it seems evident that the statement quoted from the opinion is unsupported by the record.

The phrase immediately following, in the opinion —"the total of the *surveyed* lands as inscribed upon the plat"—is we think misleading. If it only means that on the face of the plat there appears a notation that the "sum of the areas in the above plat" was the acreage stated, it is of course accurate. But that notation seems to us a very different thing from the statement that the acreage stated was "the total of the *surveyed* lands." As pointed out in our brief, the correct addition of the areas of the separate pieces whose areas are shown by the copy of the plat attached to the transcript, is 14,549.72, and that total leaves out the S. ½ of S. E. ¼ of Section 36 and the E. ½ of N. E. ¼ of Section 28. Moreover, the opinion interpolates the word "surveyed," thereby going far toward assuming the

point at issue. The "*sum* of all the areas in the above plat" may well mean an attempt to add the various figures indicating area, or it may mean that it was an attempt to give the area of the entire township. In either interpretation it is a mistake, but neither interpretation justifies, nor do the words themselves, the conclusion apparently drawn that only the pieces as to which areas are indicated on the plat were "surveyed," nor did this court so think in the Kean case (190 U. S. 452), where the situation was in all essentials the same.

"Surveyed" and "Unsurveyed" Lands.

The opinion uses the words "surveyed land" and "unsurveyed land" as if in each case in some way they were expressing characteristics pertaining to the land or its condition, with some analogy to the expressions "cultivated land," "plowed land," or "meadow land," or perhaps a closer analogy to such an expression as "land colored pink on the plat." In other words, something clearly blanketing certain land and as clearly excluding other land. We respectfully submit that the words "surveyed" or "unsurveyed" have no such meaning. The words are not absolute terms, but merely relative ones. No land is wholly "unsurveyed" if it is included within a surveyed line. On the other hand, it is impossible to conceive of lands so thoroughly surveyed that a further survey may not be necessary in order to enable the location on the grounds of some particular description. The calculation of area of a particular piece of land makes it no more "surveyed" than if its area had not been calculated,

as such calculation does not imply traversing the surface of the land but is a mere matter of computation by arithmetic, trigonometry or calculus, as the case may require. When a meander line is run around a body of water or a swamp, the body of water or swamp is just as truly surveyed as is the land above the meander line; its boundaries are ascertained. The area of either piece may or may not be computed. If the survey of the boundary is carefully made the area is a mere matter of mathematical calculation. To term the territory on one side of the meander line "surveyed" and on the other "unsurveyed" is at best a loose use of words. To base decisions in regard to title upon it seems illogical and unjust.

Speaking of the effect of a meander line in *Kean* v. *Calumet,* 190 U. S. 452, at page 459, Mr. Justice HOLMES said:

> "*It does not necessarily import that the tract on the other side of it is not sureveyed.*" (Italics ours.)

Yet the opinion gives it just such import.

Substantial rights of clients should not, we submit, suffer on account of the inartificial use of words either by court or counsel.

It is the established practice to issue patents under the homestead, pre-emption and other acts to, for instance, the Northwest Quarter of the Southeast Quarter of a certain section. Yet, in fact, neither the statute nor the regulations of the Land Office, nor the practice, requires or has ever required, the ascertainment of any part of the boundary of such a piece so described, and no part of

such boundary is, unless in very unusual circumstances in fact surveyed. The survey is confined to running out section lines and establishing quarter section corners thereon. Nothing is done inside the various sections. Not even is the center point monumented or established. Yet the land is not regarded as "unsurveyed" because its boundaries are ascertainable by inference from the surveyed boundaries of the section.

Can the opinion by using the word "unsurveyed" mean anything more than not divided into sections? And what is the importance of lack of division into *sections,* where the conveyance is by townships?

Land in cities is ordinarily surveyed into blocks, each block being divided into lots, a plat showing blocks and lots is recorded and conveyances are thereafter made by reference to such plat. It will be news to the profession generally that a deed of "the whole of Block 8," etc. would not pass the whole of Block 8 because it appeared that on the plat some part of Block 8 was not fully divided into lots.

We are of course aware that Government surveyors frequently note the character of territory included within or traversed by their lines, but this could not have been in the mind of Mr. Justice Van Devanter when he used the term "unsurveyed" as applying to the "sunk lands," for in this regard *the "sunk lands" appear from the plat to be more truly "surveyed" than the lands on the other side of the meanders.*

Effect of the Court's Decision.

If this decision remains the last word of this court on the interpretation of patents in like cases, it becomes in fact the law of the land. Wherever, therefore, surveyor's plats have shown meander lines and those meander lines have included what was at the time of the survey dry land or swamp, such dry land or swamp in each case belongs to the United States unaffected by the patent whose description includes it. Yet, heretofore, people of this country, laymen and lawyers alike, have treated these pieces of land as belonging to the patentees and their assigns. They have been included in warranties of countless deeds; they have been cleared, drained and improved; cities have in part been built on them. *Railroad Co.* v. *Schurmeier*, 7 Wall. 272. All over the public land states titles will be unsettled by this decision. No man will be justified in relying on the record title to land where the Government plat shows a meander line without careful inquiry as to the actual condition of the land at the time of the survey,—an inquiry in the very nature of things growing more and more difficult every day.

Kean v. Calumet and Other Cases.

The case upon which principal reliance was made in our brief, and a case on the authority of which the Supreme Court of Arkansas relied in deciding in favor of the District, was *Kean* v. *Calumet Canal Company*, 190 U. S. 452. The opinion in that case, written by Mr. Justice Holmes, carefully considered the same question here involved and held that a pat-

ent of "fractional sections" conveyed title to the entire sections, parts of which were meandered and in spite of a statement of acreage tremendously less than the total acreage and in fact slightly less than the sum of the acreages above the meander line and in spite of the reference to official plats. This court reached its decision in the Kean case only after the most careful consideration. The case was argued twice, once on October 23, 1901, and the second time on January 9 and 12, 1903. A long dissenting opinion was filed by the Chief Justice and Mr. Justice McKenna. Were not the bar of the country justified in thinking that this court had made up its mind on the question involved and that clients might safely be advised that Mr. Justice Holmes' opinion in that case represented the law as to patents under the swamp land grant?

The present litigation was started a few years after the opinion was rendered in the Kean case. It is certainly fairly to be supposed, as was the fact, that it was started in reliance upon the Kean case. Now we find the highest court in the land rendering a decision upon a question, on which that case was the last and certainly the ruling authority and utterly ignoring that case.

Are not the Supreme Court of Arkansas and counsel for the District entitled to more consideration? We cannot assume that this court reached a decision without considering the authorities cited and earnestly pressed in our brief and in entire forgetfulness of our oral argument. Would not, however, a lawyer who was familiar with the Kean case, but not familiar with the record and arguments in

this case, be justified in assuming from the court's opinion in this case that nowhere in the proceedings leading up to the decision in this court had the Kean case been mentioned, and would he not conclude that counsel in this case had been derelict in duty to their client in failing to bring before this court its previous decision on the same legal questions?

We might, out of the great respect which the decisions of this court command, be forced to the conclusion that we had misapprehended the case and that there was no relation between the questions arising in the Kean case and those in the case at bar, but that can hardly be, for the opinion rendered by Justice Van Devanter follows exactly the reasoning found in the brief of counsel for the defeated party in the Kean case. The first sentence of that brief filed to the October term, 1901, reads as follows: "Under Section 2396 U. S. R. S. the original survey of 1834 did in fact and in law stop at the 'water course' ".

The surveys in the two cases were precisely similar. In the Kean case, as appears from the plat included in the dissenting opinion (page 463) the so-called "lakes" were meandered and were just as much "unsurveyed" as were the "sunk lands" in the case at bar. Yet this court expressly held that the "lakes" were included in the survey so that a description by sections passed title to them, whereas, in this case the court holds that the "sunk lands" which it calls lakes were not included in the survey so that a description by townships excludes them.

There are absolutely but two distinctions to be

drawn between this phase of the Kean case and of the case at bar.

1. In the Kean case, sections were in question. In the case at bar, townships.

2. The Kean case arose in 1895 in Indiana, and the case at bar in 1907 in Arkansas.

The opinion also ignores the decisions of the Indiana Supreme Court *approved and followed by this Court in Kean* v. *Calumet* (*Kean* v. *Roby,* 145 Ind. 221; *Tolleston Gun Club* v. *State,* 141 Ind. 197; *Stower* v. *Rice,* 121 Ind. 51) and of the Supreme Court of Louisiana (*McDade* v. *Bossier Levee Dist.,* 109 La. 626).

Counsel would not have been justified in ignoring the Kean case, and the other decisions. How, then is the court justified? If reported decisions of courts are to be ignored, why should they be reported? Or, indeed, why should they be written? If all cases are to be decided as questions of first instance, there is little excuse for inflicting upon members of a court of review the burden of giving reasons for the conclusions reached. Even if the satisfaction perhaps afforded counsel in a case would be sufficient reason for such a burden, none is left for the publication of such opinions. The only justification for their publication is that they may serve to guide the bar in advising clients, advocates in their work in the courts, and finally, the courts themselves in subsequent cases.

From the record it is disclosed that the selection made by the governor of the State of Arkansas was for the whole Township 12 North, 7 East. The modi-

fication recited in the certified copy of course means the modification made by the Land Commissioner. Under the Act of 1850 the state was entitled to all of the swamp land in that township. The governor selected the whole township. The part meandered out by surveyors was specifically identified as "swamp and overflowed," for the survey itself calls it "sunk land." The state had a right to this land and the governor had selected it. "IT NOT APPEARING OTHERWISE, THE SELECTION MUST BE PRESUMED TO HAVE INCLUDED THE LAND OVERFLOWED, AND IF SO IT WAS CONFIRMED TO THE STATE BY THE ACT OF MARCH 3, 1857," (*Kean* v. *Calumet*, 190 U. S. 452, 460).

THE THREE "ELEMENTS."

The opinion seems to find three "elements" in the description. First, that the description includes "the whole township." Second, that the patent refers to "official plats of survey." Third, that it states an acreage less than the actual acreage of the township. Obviously, the two latter elements are the ones on which the decision was based. It seems self-evident that the reference to a plat in a description must be for the purpose of ascertaining what are the boundaries of the land described. The township, as a township, was as complete whether the interior lines were run or not and when the words "the whole of the township" are used, it seems to us like playing with words to say that they meant anything else. Suppose no interior line had been run, would the patent have been meaningless?

As to the third "element"; the statement of acreage, we can do nothing more than refer to the mass

of authorities cited in our brief to the effect that *a description otherwise clear is never controlled by a false statement of acreage,* and also to the fact argued at length that the acreage question had nothing to do with passing title under the Swamp Land Act, that the only thing with which the Land Office was concerned was the character of the land, not its area.

But in considering these "elements" we are again brought up against the Kean case. Precisely the same elements were present in the patents in that case, with only this modification, that there, instead of speaking of "the whole of township" they speak of "the whole of *fractional* sections." In the patent and in the approved list in the Kean case the acreages were given, and the acreages given were those of the portions above the meander lines. Moreover, the patent in that case had precisely the same words of reference to the Government plats as in the case at bar. The proportion of land above the meander lines was less in the Kean case and the ascertainment of the boundary lines less clear. This all appears from the plat shown on page 24 of the printed Record in the Kean case, (No. 42 Oct. Term 1901; No. 8, Oct. Term 1902), and from the patent shown briefly on page 26 thereof and more at length at page 170 of the original record therein. But it is unnecessary to trouble the court to look up its old files as the matter sufficiently appears in the dissenting opinion in the Kean case (190 U. S., at pages 462 to 464), although the plat there given lacks a few of the details found in the printed record.

It being the fact then that all three "elements"

for the interpretation of this patent mentioned in the opinion occurred in the Kean case, why then does the court come to an opposite result?

We are of course not blind to the fact that the opinion in the Kean case was also based upon the theory of *Hardin* v. *Jordan,* 140 U. S. 371, but that opinion unequivocally held that the patent included the entire sections both above and below the meander line, for it says "The land surrounding the water at least was surveyed, so that *the identification of the submerged portion was absolute.*" We confidently submit that there is no theory of law under which, where a court gives two reasons for a conclusion, one may be picked out as authority and the other rejected.

In reading the opinion in this case one would get the impression that there was something unusual in the reference to "official plats" in this particular patent, something which justified interpreting this patent differently from other patents issued by the Government. The contrary, of course, is the fact. The reference to these plats occurs, we venture to state, in every patent issued by the Government where the description is expressed in townships, in sections, or in parts of sections.

Why should this reference now suddenly assume gargantuan proportions in the mind of the court and impel it to reverse the heretofore accepted construction?

There is nothing new in the presence of the third "element" either alone or in connection with the second. For many years the Land Office in patent-

ing lands intersected with waters and swamps has been accustomed in its patents both to refer to the plats and to state an acreage corresponding approximately to the acreage of the lands above the meander lines. This court has repeatedly held that the meander lines themselves and the acreages found or guessed at existed merely for the purpose of determining how much a purchaser from the Government should pay and that they did not control the description.

See

Hardin v. *Jordan,* 140 U. S. 371, 380.

INTERPRETATION BY THIS COURT OF SWAMP LAND ACT.

The Swamp Land Act was passed in 1850. Selections under it were confirmed in 1857. Whatever rights the states derived under these two acts must have accrued at the time of their approval. Something was granted to the states. That something was not a general governmental or political principle, in its nature subject to development, fluctuation or change with the general development of civilization and law, but was a right of some nature in and to swamp lands. The interpretation of that act, therefore, was the establishment of a rule of property. Yet, if any right has suffered from the changing decisions of this court it is the right acquired by the states under this grant.

This court has persistently called the grant a grant *in praesenti.* It first held that the *title* to the land passed by virtue of the grant itself *Martin* v. *Marks,* 97 U. S. 345; *Rice* v. *Railroad Co.,* 110 U. S.

695; *Wright* v. *Roseberry,* 121 U. S. 488; *Tubbs* v. *Wilhoit,* 138 U. S. 134; *Irwin* v. *San Francisco Savings Union,* 136 U. S. 578. Later it held that while the legal title was in the United States equitable right passed to the state. *Brown* v. *Hitchcock,* 173 U. S. 473. Still later that equitable title has dwindled to a mere "inchoate right." So that now the situation seems to be that the Swamp Land Act was a grant *in praesenti of an inchoate right*—a seemingly meaningless phrase.

Moreover, this court held in the case of *Mitchell* v. *Smale,* 140 U. S. 406, 413, that while it was possible for the Land Department, to issue a patent reserving lands within a meander line inside a surveyed section, if the description in the patent were so limited by "express" words, yet that could not be done in a patent to a state under the Swamp Land Grant. Now the court proposes to hold not only that, speaking generally, a United States grant will be interpreted as stopping at a meander line found inside the outer boundaries of the description, but that this is the result in grants to states under the Swamp Land Act where there are no such express words of limitation, but words—*the whole of the township*—expressing a directly contrary intent.

The majority of this court in the case of *Muhlker* v. *New York & H. R. Co.,* 197 U. S. 544, disapproved to the extent of reversal of a somewhat similar right-about-face on the part of the Court of Appeals of New York. This court has frequently announced its general allegiance to the principle of *stare decisis.* We realize that this court is not absolutely

bound by such principle, and in fact that it is of importance to the best interests of the country that it should not be so absolutely bound. We realize that the power of this court to decide a case according to its best judgment is, and should be, unlimited. "It is excellent to have a giant's strength," but we respectfully submit that in this case the court proposes to use its power without having sufficiently considered either the logical basis of its determination, the effect thereof, or the state of the law as found in its own prior decisions, and those of the highest courts of the states.

WHEREFORE your petitioner prays this Honorable Court for an order granting a rehearing of said cause, and that your petitioner may have such other relief as may be just.

BOARD OF DIRECTORS ST. FRANCIS LEVEE DISTRICT.

H. F. ROLESON,
J. C. HAWTHORNE,
N. F. LAMB,
Attorneys.

SAMUEL ADAMS,
Of Counsel.

I, Samuel Adams, counsel for the Board of Directors St. Francis Levee District, defendant in error and the above petitioner, do hereby certify that the foregoing petition for rehearing is not interposed for delay, and in my judgment said petition is well founded, and the order herein prayed for should be granted.

SAMUEL ADAMS.

CHAPMAN & DEWEY LUMBER CO. *v.* ST. FRANCIS LEVEE DISTRICT.

PETITION FOR REHEARING.

No. 82. Petition for rehearing by defendant in error received and distributed to the Justices on March 6, 1914.—Decided June 22, 1914.

In presenting petitions for rehearing a duty rests upon counsel to deal with the case as it is disclosed by the record.

THE facts are stated in the opinion.

Mr. Samuel Adams, Mr. H. F. Roleson, Mr. J. C. Hawthorne and *Mr. N. F. Lamb* for petitioner.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

Leave to file a petition for rehearing is sought in this case. The petition has been examined, and we find it so wanting in merit that leave to file it must be denied. Doubtless, a formal denial would suffice, but we prefer to notice two statements in the petition.

As our opinion (232 U. S. 186) shows, the controlling question was, whether a patent issued to the State of Arkansas in 1858 under the Swamp-land Act embraced all the lands within the exterior boundaries of a designated

township, or only the lands lying without certain meander lines shown upon the official plat which, by reference, was made part of the description in the patent. The plat showed that large areas in the township, amounting to 8,000 acres or more, were meandered as bodies of water called "Sunk Lands," and that the remaining areas were surveyed into sections and parts of sections, the aggregate of which, according to an inscription upon the plat, was 14,329.97 acres. Deducting from the latter 514.30 acres in fractional section 16, which had passed to the State under the school-land grant, left 13,815.67 acres, and this was the acreage given in the patent, from which section 16 was excepted. The mode of claiming lands under the Swamp-land Act was by presenting selection lists to the Surveyor General, and, as bearing upon what was intended to be conveyed by the patent, we stated that the list in this instance "described the township as containing 14,329.97 acres, the total of the surveyed areas as inscribed upon the plat," and that this, less the 514.30 acres in fractional section 16, was the area given in the patent.

One of the statements in the petition for rehearing is that our opinion "proceeds on the hypothesis, unsupported by the record," that the Governor of Arkansas, in his request for the patenting of the township in question, stated its acreage. In assuming that it is our duty to deal with the case as it is disclosed by the record, counsel are clearly right. A like obligation rests upon counsel. The record (p. 207) contains a certificate from the General Land Office, introduced in evidence without objection, saying: "The original selection list of swamp lands in T. 12 N., R. 7 E., [the township in question] gives the area of the township as 14,329.97 acres, and that amount was also given in the approved list. Section 16, which passed to the State under the school grant, contains 514.30 acres, and as such lands were not granted under the swamp-land laws, the area of section 16 was deducted from the

total of the township, leaving 13,815.67 acres, which amount was accounted for in the patent." The certificate stands uncontradicted in the record and was accepted by the Supreme Court of the State as determinative of the facts recited in it (100 Arkansas, 94, 97). Nothing more need be said upon this point.

Another statement in the petition is that we erred in treating the meandered areas embodying the lands in controversy as unsurveyed lands. The record (p. 1) shows that the complaint filed in the court of first instance, and which counsel seek to maintain, alleged that these lands "were left unsurveyed by the United States Government." The sunk lands were also described by the representative of the State as "not yet surveyed," when the State's claims under the Swamp-land grant were being adjusted and settled in 1895. H. R. Rep. No. 1634, 54th Cong., 1st Sess., pp. 5 and 32. This will suffice upon this point.

Leave to file petition denied.